TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 154.

GEORGE W. BOWEN, APPELLANT,

vs.

NELSON CHASE, ELIZA JUMEL PERY, AND PAUL R. G. PERY, HER HUSBAND, AND WILLIAM I. CHASE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 15, 1874.

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1 The President of the United States of America, to George W. Bowen, greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of April, A. D. 1873, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Nelson Chase, Eliza Jumel Pery and Paul R. G. Pery her husband, and William I. Chase, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you of two hundred and fifty dollars.

Witness, Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at the city of New York, on the 20th day of February, in the year one thousand eight hundred and seventy-three, and of the Independence of the United States of America the ninety-seventh.

[SEAL.] KENNETH G. WHITE, *Clerk.*

JAMES C. CARTER,
Complts'. Sol'r.

The defendant is required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of April, 1873, or the bill will be taken pro confesso against him.

K. G. W., *Clerk.*

2 I hereby depute W. T. Smith to serve the within process.

GEO. H. SHARPE,
U. S. Marshal.

FEB'Y 25, '73.

Filed Feb'y 24, 1873.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William T. Smith, being duly sworn, deposes and says that he served a copy of the within writ upon George W. Bowen, the defendant within named, at the city of New York, in said district, on Thursday, February 20th, 1873, by leaving said copy with him, at the same time showing him the original.

WM. T. SMITH.

Sworn to before me this 20th day of February, 1873.

JOHN A. SHIELDS,
U. S. Com.

Served as stated in above affidavit.

GEO. H. SHARPE,
U. S. Marshal.

FEB'Y 24, '73.

3 In the circuit court of the United States for the southern district of New York, in the second circuit, in equity.

To the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit:

Nelson Chase, of the city of New York, in the county of New York, in the State of New York, a citizen of the said State, and Eliza Jumel

Pery and Paul R. G. Pery her husband, both of said city, county, and State, and also both citizens of said State, and William I. Chase, of the said city, county, and State, and also a citizen of said State, plaintiffs, bring this their bill of complaint against George W. Bowen, of the city of Providence, in the State of Rhode Island, and a citizen of the said State of Rhode Island, defendant; and thereupon your orators and oratrix complain and say:

That on the ninth day of April, in the year one thousand eight hundred and four, one Stephen Jumel, a Frenchman, then of the city of New York, and being a wealthy merchant, was united in marriage at that city with a young woman, a native of Rhode Island, of humble parentage, who then was named and called Eliza Brown, and always theretofore had been in very humble pecuniary circumstances, and who was thenceforth and thereafter commonly called Eliza B. Jumel; and that the said Stephen Jumel thenceforth lived in matrimony
4 with his said wife until the twenty-second day of May, in the year one thousand eight hundred and thirty-two, when he died in the same city, intestate, without leaving any issue of his said marriage or other heir at law him surviving.

And your orators and oratrix further say that the said Eliza B. Jumel survived the said Stephen Jumel and died his widow, in the said city of New York, on the sixteenth day of July, in the year one thousand eight hundred and sixty-five, in the eighty-ninth year of her age, without leaving any valid or effectual last will or testament.

And your orators and oratrix further say that the said Stephen Jumel and his said wife, in or about the year one thousand eight hundred and five, at said city of New York, took and received into their dwelling-house and domesticated as one of their family, as their child by adoption, and as the intended heiress and successor to them respectively of and in all such estate as they or either of them might leave at their deaths, a female child then of tender years, hereinafter more particularly mentioned and called Mary Jumel Chase; and that they, the said Stephen Jumel and his said wife, thenceforth supported, maintained, and educated, and harbored as a member of their family and in their places of abode, the said Mary, as such, their adopted child, until the fifteenth day of January, in the year one thousand eight hundred and thirty-two, when, with their consent and approval, she, the said Mary, intermarried with and became the wife of your orator Nelson Chase.

And your orators and oratrix further say that from and after such marriage of said Mary, and until she, said Mary, departed this life at the said city of New York, on the fifth day of May, in the year one thousand eight hundred and forty-three, she, the said Mary, continued to occupy and sustain, by the full acceptance, recognition, and acknowledgment of the said Stephen Jumel and his said wife, during the life of said Stephen, and of his said wife, after his death, such relation of adopted child as aforesaid.

5 And your orators and oratrix further say that the said Mary, who from her said marriage was known and called Mary Jumel Chase, left, her surviving, at her death as aforesaid, her said husband, your orator Nelson Chase, and two children, her only heirs at law; that is to say, a daughter, your oratrix, now named Eliza Jumel Pery, who was born on the twenty-fifth day of March, in the year one thousand eight hundred and thirty-four, and a son, your orator William I. Chase, who was born on the seventeenth day of August, in the year one thousand eight hundred and forty.

And your orators and oratrix further say that in conformity with a

promise to that effect made by the said Eliza B. Jumel unto her, said Mary Jumel Chase, when in her last illness and nigh unto death, she, the said Eliza B. Jumel, at and immediately on the death of said Mary Jumel Chase, took under and into the assumed guardianship and custody of her, the said Eliza B. Jumel, as her descendants and grandchildren by adoption, and as the intended heirs or successors to her estate at her death, your oratrix, Eliza Jumel Pery, and your orator William I. Chase, they then being both infants of tender years, and thereafter until the marriage of your oratrix, Eliza Jumel Pery, as hereinafter stated, and until your orator William I. Chase had attained his age of nineteen years, harbored in her family at her places of abode, and supported, maintained, and educated as such wards and adopted grandchildren, at all times during that interval, your oratrix, Eliza Jumel Pery, and your orator William I. Chase, in like manner as the said Stephen Jumel and his said wife had so as aforesaid harbored, maintained, and educated the said Mary Jumel Chase, their said mother.

And your orators and oratrix further say that the said Stephen Jumel, in his life-time, and on and prior to the second day of June, in the year one thousand eight hundred and fifteen, was possessed and seized in fee-simple absolute of all and singular the premises, lands, tenements, hereditaments, and real estate hereinafter first, sec-
6 only, thirdly, fourthly, fifthly, and sixthly described, and well entitled unto the same, and every part and parcel thereof, with the appurtenances, that is to say:

First. All that parcel of land and premises situate, lying, and being in the Second ward of the city of New York, on the northeasterly corner of Broadway and Liberty street, in said city, containing in breadth, in front on Broadway, twenty-six feet or thereabouts, be it more or less, and in the rear twenty-five feet, more or less, and in length on both sides one hundred and ten feet; bounded in front, west by Broadway, east by the ground formerly of the heirs of William De Count, deceased, or their assigns, south by Liberty street, and north by the house and ground formerly in the possession of Richard Tripp Cooper, which formerly belonged to one Lieutenant Buckley, deceased, together with the buildings, tenements, hereditaments, and appurtenances thereunto belonging, together with one-half of the wall of the house late of the said Buckley, as also a passage-way or alley from the nearest part of such parcel, said alley being four feet in breadth, and is in the rear of such parcel, which alley was formerly a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary his wife, by indenture of lease and release bearing date the first and second day of November, one thousand seven hundred and forty-seven.

Secondly. All that other parcel of land, situate in the said Second ward, which was conveyed to Stephen Jumel by Mary Haight, John C. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, deceased, formerly of the said city, saddler, by an indenture bearing date the twenty-first day of May, A. D. eighteen hundred and thirteen, and which said last-mentioned parcel of land is described in such conveyance thereof substantially as follows:

All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the north-
7 easterly corner of the said ground, and running thence southerly twenty-three feet or thereabouts; thence westerly twenty feet;

thence northerly fifteen feet or thereabouts; thence easterly six feet; thence northerly eight feet; thence easterly fourteen feet, to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie, southerly by ground now or late belonging to the said Stephen Jumel, westerly by ground belonging to the heirs of the said Benjamin Haight, deceased, and northerly partly by ground belonging to the same heirs and partly by ground now or late belonging to the heirs of one Richard Kipp, deceased, as by annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear, together with the buildings, tenements, hereditaments, and appurtances thereunto belonging.

Thirdly. All those certain other nine lots or parcels of land and premises situate, lying, and being at Harlem Heights, in the present Twelfth ward of the said city of New York, and which taken together are bounded and described as follows: on the north by lands formerly belonging to Mrs. Bauer, on the west by the then Albany post-road, now called Broadway, on the south by land formerly belonging to George Wear, and on the east by the Harlem River, containing ninety-four acres three roods and twenty perches, be the same more or less, being in all nine lots, respectively numbered six, seven, nine, ten, eleven, twelve, thirteen, fourteen and fifteen, according to a map entitled "A map of the estate of Leonard Parkinson, esquire, situate at Harlem Heights, surveyed and laid out into lots by Charles Loss, city surveyor, New York, March 1, 1810."

Fourthly. All that certain other lot or parcel of ground on which said Eliza B. Jumel resided and had her homestead at the time of her death, situate, lying, and being in the present Twelfth ward of the said city of New York, bounded and described as follows: northwesterly by Tenth avenue, northerly by land formerly belonging to George Wear, afterwards belonging to Shepherd Knapp, easterly by the Harlem
8 River, southerly by lands formerly belonging to Beekman, and westerly by the said Albany post-road, containing about thirty-two acres, be the same more or less, and being part of lot numbered eight on the said map so made by said Charles Loss, together with the buildings thereon, and the tenements, hereditaments, and appurtenances thereunto belonging; and,

Fifthly. All that certain other lot of land and premises, situated in the present Twelfth ward of the city of New York, bounded as follows, that is to say: by a line beginning at the then Albany post-road, now called Broadway, at the northeast corner of lot number four, and running north, sixty-three degrees fifteen minutes west, sixteen hundred and ninety feet to the North or Hudson's River; thence north, forty-five degrees west, three hundred feet; north, twenty-four degrees twenty-five minutes west, two hundred and ninety feet; north, fifteen degrees east, two hundred and ten feet; north, fifty degrees forty-five minutes west, ninety-one feet; north, fifteen degrees thirty minutes east, one hundred and eighty-three feet, to the land now or formerly of Arden's; thence south, seventy-one degrees thirty minutes east, along Arden's line, two thousand one hundred and sixty feet, to the said Albany post-road and northeast corner of lot number five; thence along the same road, south, fifteen degrees west, four hundred and sixty-seven feet; south, nine degrees west, two hundred and eighty-one feet; south, twelve degrees west, two hundred and fifty-eight feet, to the place of beginning, containing thirty-nine acres one rood, and bounded on the north by said Arden's land, on the west by the said North or Hudson's River, on the south by the said lot numbered four, and on the east by

the said Albany post-road, and numbered five on the said map made by Charles Loss.

And your orators and oratrix further say that the said Stephen Jumel, long before, and on the said second day of June, in the year one thousand eight hundred and fifteen, had as his homestead a large and elegant mansion or dwelling-house, with its various barns, stables, and other attached out-houses, gardens, and pleasure-grounds, situate
9 and being upon and exclusively occupying the lands and premises numbered eight on Loss' map aforesaid, which said lot, so numbered eight, consisted of the said lot or parcel of ground fourthly above described and the triangular piece or parcel of land sixthly hereinafter described, and that the said Stephen Jumel, on and long prior to the last-named day, dwelt with his family, consisting of his said wife and adopted daughter, in and upon his said homestead and lot, so numbered eight on said map; and that at and before the said last-named day, the said Stephen Jumel, with his said family, also occupied and enjoyed, in connection with the said homestead, as woodland to supply such homestead and the indwellers thereof with fuel and fencing-timber, as pasture and meadow to supply food for their domestic animals, and fruit for their use, and occasionally in small part to supply them with corn and vegetables, the said lands and premises thirdly above described, which said lands and premises thirdly above described were and are nigh unto the said homestead, and at and before the last-named day, and at all times thereafter, lay together and undivided as one parcel, and were principally wild and uncultivated, and were in like manner occupied and enjoyed, with very slight intervals, continuously in connection with said homestead by the said Stephen Jumel and his said family in his life-time, and his said widow and said family after his death, save some portions thereof which have been taken for roads and other public uses.

And your orators and oratrix further say that the said Stephen Jumel continued until his death so to dwell in said homestead, as aforesaid, and in such occupation and enjoyment of such his homestead, as aforesaid, and of the said lands and premises thirdly above described, together with his said family, consisting of his said wife and adopted daughter, as aforesaid, until the marriage of his said adopted daughter, and, after that event, consisting of them and your orator Nelson Chase.

And your orators and oratrix further say that, in like manner as is usual in like cases on the part of a widow on the decease of her husband, as the eldest member of 'he family, she, the said Eliza B. Jumel,
10 upon and after the death of her said husband, the said Stephen Jumel, continued to live with her said adopted daughter and your orator Nelson Chase, and your oratrix and your orator William I. Chase after they came into life; and that at all times after the death of the said Stephen Jumel, until the said marriage of your oratrix, the said last-mentioned five persons, whilst respectively in life, dwelt together as one family, in like manner as such of them as were then in life, and connected as aforesaid, had so as aforesaid dwelt together in the life-time of the said Stephen Jumel.

And your orators and oratrix further say that, by divers conveyances made and executed subsequently to the said second day of June, in the year one thousand eight hundred and fifteen, and before the eleventh day of December, in the year one thousand eight hundred and twenty-seven, the said lands and premises, with their respective appurtenances, first, secondly, thirdly, and fifthly above described, were in due form of law granted and conveyed from the said Stephen Jumel, and vested in the said Mary Jumel Chase, by her then name of Mary

Jumel Bowne, in fee-simple; and that afterwards, on the last-named day, she, the said Mary Jumel Chase, by her said then name of Mary Jumel Bowne, did, by her certain deed of conveyance of that date, in due form of law, grant and convey in fee-simple unto one Michael Werckmeister the same lands and premises, with their respective appurtenances, first, secondly, and fifthly above described, and so much of the said lands and premises thirdly above described as was so as aforesaid designated as lot number six on the map aforesaid, in trust, nevertheless, for the uses and purposes following, in such deed expressed and declared, that is to say, in trust that the said Michael Werckmeister and his heirs collect and receive the rents, issues, and profits of the same lands and premises and pay over the same unto Eliza B. Jumel, or, at her election, suffer and permit her, the said Eliza B. Jumel, to use, occupy, and possess the said lands and premises, and to have, take, collect, receive, and enjoy the rents, issues, and profits thereof,
11 to and for her own separate use and benefit, and to and for such other uses and purposes as the said Eliza B. Jumel should please and think fit at her own free will and pleasure and not subject to the control and interference of any husband; and, upon this further trust, that the said Michael Werckmeister or his heirs, lease, demise, let, and convey, assure and dispose of all and singular the same lands and premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, intents, and purposes, and in such manner and form as she, the said Eliza B. Jumel, notwithstanding any coverture, as if she were a feme sole, should, by any instrument in writing, executed in the presence of any two credible witnesses, order, direct, limit, and appoint; and in case of an absolute sale of said premises, or of any part thereof, to pay over the purchase-money to the said Eliza B. Jumel, or invest the same as she shall order and direct; and, upon this further trust, upon the decease of the said Eliza B. Jumel, to convey the same lands and premises, or such parts thereof as should not have been previously conveyed by the said Michael Werckmeister or his heirs, and with respect to which no direction or appointment should have been made by the said Eliza B. Jumel, in her life-time, to the heirs of the said Eliza B. Jumel, in fee-simple, and pay over to the heirs of the said Eliza B. Jumel such moneys as should remain in the hands or under the control of the said Michael Werckmeister or his heirs, arising from collections of the rents and profits, or the proceeds of the sales of the same lands and premises, or any part thereof.

And your orators and oratrix further say that, by divers other conveyances executed subsequently to the second day of June, in the year one thousand eight hundred and fifteen, and before the thirteenth day of May, in the year one thousand eight hundred and twenty-eight, the said lands and premises, with their respective appurtenances, then constituting the aforesaid homestead, and being the lands and prem-
12 ises numbered eight upon Loss' map aforesaid, and consisting of the land and premises fourthly above described and sixthly hereinafter described, were in due form of law granted and conveyed from the said Stephen Jumel and vested in the said Mary Jumel Chase, by her said then name of Mary Jumel Bowne, in fee-simple; and that afterwards, on the last-named day, she, the said Mary Jumel Chase, by her then name of Mary Jumel Bowne, did, by her certain other deed of conveyance of that date, in due form of law, grant and convey unto the said Michael Werckmeister, in fee-simple, the same lands and premises,

with their appurtenances, so numbered eight upon said Loss' map, and consisting as last aforesaid; which last-mentioned deed of conveyance and the grant and conveyance thereby made were, and in such last-mentioned deed were expressed and declared to be, in trust, nevertheless, and to and for the same uses and purposes in respect to the lands and premises by such last-mentioned deed so conveyed as were so as aforesaid expressed and declared in the aforesaid deed bearing date the eleventh day of December, in the year one thousand eight hundred and twenty-seven, in respect of the lands and premises by such last-mentioned deed so granted and conveyed as aforesaid.

And your orators and oratrix further say that afterwards, in the lifetime of the said Eliza B. Jumel, and on the twenty-first day of November, in the year of our Lord one thousand eight hundred and twenty-eight, the said Eliza B. Jumel, by a certain deed or instrument of appointment, in writing, in that behalf then made and executed by her, under her hand and seal, and executed in the presence of two credible witnesses, then and there signing, subscribing, and attesting the same instrument as such, under and in pursuance of the power in that behalf to her granted in and by the said deeds respectively bearing date on the said eleventh day of December, one thousand eight hundred and twenty-seven, and the thirteenth day of May, one thouand eight hundred and twenty-eight, did, in due form of law, and in a valid and effectual manner, order, direct, limit, and appoint that immediately after the decease of her, the said Eliza B. Jumel, he, the said Michael Werckmeister, or his heirs, (among other things,) all and singular the said lands and premises, with their respective appurtenances so granted to him, should convey to such person or persons and to such uses and purposes as she, the said Eliza B. Jumel, should, by her last will and testament, under her hand, and executed in the presence of two or more credible witnesses, designate and appoint, and for want thereof, then that he should convey the same to Stephen Jumel, the husband of said Eliza B. Jumel, in case said Stephen Jumel should be then living, for and during his natural life, subject to an annuity, to be charged thereon during such his natural life, of six hundred dollars, payable to the said Mary Jumel Chase, by her said then name of Mary Jumel Bownes; and after the death of the said Stephen Jumel, or, if he should not survive the said Eliza B. Jumel, then immediately after the death of her, the said Eliza B. Jumel, to her, the said Mary Jumel Bownes, and her heirs, in fee.

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And your orators and oratrix further say that all parts of the said lands thirdly above described were, at or before the making of said deed of appointment, in due form of law settled legally or beneficially to the benefit of said Mary Jumel Chase and her heirs in fee substantially in like manner as in said deed of appointment specified; and that the said Michael Werckmeister died before the death of the said Eliza B. Jumel, and without leaving any heir competent to take lands from him.

And your orators and oratrix further say that after the death of the said Stephen Jumel, she, the said Eliza B. Jumel, acquired in fee simple absolute, by grant and conveyance unto her and her heirs, in due form of law, and by purchase, certain other lands and premises, which may be and hereby are respectively described, with common and convenient certainty, as follows, that is to say:

Seventhly. All that certain parcel of land situate, lying and being in the Twenty-second ward of the said city of New York, bounded and described as follows: Commencing at a corner formed by the intersection of the northerly line of Forty-first street with the

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westerly line of the Seventh avenue, running thence northerly along the westerly line of the Seventh avenue, nineteen feet and nine inches; thence westerly, and parallel with Forty-first street, sixty feet; thence southerly, and parallel with Seventh avenue, nineteen feet and nine inches, to the northerly line of Forty-first street; thence easterly along said last-mentioned line, sixty feet, to the place of beginning, together with the buildings thereon, and the tenements, hereditaments and appurtenances thereunto belonging.

Eighthly. All that certain dwelling-house and parcel of land situate, lying, and being in the Twenty-second ward of the city of New York, bounded and described as follows: Beginning at a point on the westerly side of Seventh avenue, distant nineteen feet and nine inches northerly from the northerly side of Forty-first street, and running thence northerly along the westerly side of Seventh avenue nineteen feet and nine inches; thence westerly, and parallel with Forty-first street, sixty feet; thence southerly, and parallel with Seventh avenue, nineteen feet and nine inches; and thence easterly, and parallel with Forty-first street, sixty feet, to Seventh avenue at the place of beginning, together with the buildings thereon, and the tenements, hereditaments, and appurtenances thereunto belonging.

Ninthly. All that certain farm situate in the town of Saratoga Springs, in the county of Saratoga, and State of New York, containing one hundred and sixty-two acres one rood and thirty-two perches of land, and more particularly described in a certain deed of conveyance thereof bearing date the third day of September, one thousand eight hundred and thirty-six, made by Isaac Taylor and Betsy his wife to the said Eliza B. Jumel.

Tenthly. All that certain other farm situate, lying, and being in the said town of Saratoga Springs, containing fifty-five acres and a half acre of land, and more particularly described in a certain deed of conveyance thereof bearing date the twenty-ninth day of August, one thousand eight hundred and thirty-six, made by William L. F. Warren and Eliza his wife to the said Eliza B. Jumel.

Eleventhly. All that certain other parcel of land situate on the westerly side of Circular street, in the said village of Saratoga Springs, and more particularly described in a certain deed of conveyance thereof bearing date the sixteenth day of September, one thousand eight hundred and fifty-one, made by John Hodgman and Zilpha Hodgman his wife to the said Eliza B. Jumel.

Twelfthly. All that certain other parcel of land situate in the said village of Saratoga Springs, (and being a part of a farm called the Sadler farm,) containing five acres of land, and more particularly described in a certain indenture bearing date the eleventh day of November, one thousand eight hundred and thirty-five, made by William L. F. Warren and Eliza his wife, of the first part, and William Lord, junior, and Charles J. Stearns, of the second part.

Thirteenthly. All that certain lot of land situate in the village of Saratoga Springs, (and being part of a farm called the Sadler farm,) containing ten acres one rood and twenty-seven perches of land, and more particularly described in a certain indenture bearing date the tenth day of March, one thousand eight hundred and thirty-six, made between William L. F. Warren and Eliza his wife, of the first part, and Marvin Holden, of the second part; and

Fourteenthly. All that certain other lot of land situate in the said village of Saratoga Springs, (and being a part of a farm called the Sadler farm,) containing nine acres three roods and sixteen perches of

land, and more particularly described in a certain indenture bearing date the twelfth day of March, one thousand eight hundred and thirty-six, made between William L. F. Warren and Eliza his wife, of the first part, and Eliza Hull, of the second part.

And you orators and oratrix further say that the said Eliza B. Jumel died seized and possessed of all and singular the said lands and
16 premises seventhly, eig'thly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly above described.

And your orators and oratrix further say that after such conveyances to the said Michael Werckmeister, and such deed of appointment so executed by the said Eliza B. Jumel as aforesaid, and after the death of the said Mary Jumel Chase, and on or about the fifteenth day of April, in the year of our Lord one thousand eight hundred and fifty, she, the said Eliza B. Jumel, by certain deeds of conveyance in that behalf then made, did fraudulently, and in violation of the aforesaid trust and appointment, but in legal form, convey and cause to be conveyed and assured to one Ambrose C. Kingsland, his heirs and assigns, in fee-simple absolute, the aforesaid lands and appurtenances fifthly above described, by whom and his assigns the same have ever since been and now are held.

And your orators and oratrix further say that afterwards, and on the first day of March, in the year one thousand eight hundred and fifty-three, she, the said Eliza B. Jumel, by certain deeds of conveyance in that behalf then made, did in like manner fraudulently, and in violation of the aforesaid trust and appointment, convey and cause to be conveyed and assured in legal form unto one Isaac P. Martin, his heirs and assigns, in fee-simple absolute, a certain part and portion of the said lot so as aforesaid numbered eight on Loss' map aforesaid, and of said Stephen Jumel's homestead aforesaid, which said part or portion of such homestead and lot so numbered eight, so conveyed and assured to the said Isaac P. Martin, may be and now hereby is described, with common certainty, as follows, that is to say: Sixthly, all and singular that certain triangular piece or parcel of land, situate in the Twentieth ward of the city of New York, bounded as follows: on the east by the Tenth avenue, on the north by land now or late of Shepherd Knapp, formerly Wear's land, and at one time known as the Cross Keys property, and on the west by the Kingsbridge road, containing about three acres, more or less. And your orators and oratrix further say that the said
17 Isaac P. Martin and his assigns have hitherto held and possessed, and now hold and possess, the said land and premises sixthly above described, under such conveyance to him as aforesaid.

And your orators and oratrix further say, claim, and insist that for and by reason of such fraudulent and unjust conveyance, assurance, and making away as aforesaid with the said lands and premises, with their appurtenances fifthly and sixthly above described by her, the said Eliza B. Jumel, preventing your oratrix and your orator William I. Chase, at the death of her, the said Eliza B. Jumel, and ever thereafter, from having, receiving, or enjoying the same or any part thereof, she, the said Eliza B. Jumel, at her death, and her real and personal representatives, whether such as executors, administrators, devisees, legatees, next of kin or heirs at law of her, the said Eliza B. Jumel, or otherwise, were bound to make and liable for restitution in that behalf unto your oratrix and your orator William I. Chase respectively, by procuring such lands and premises, fifthly and sixthly above described, or if that be impracticable, then lands of equal value to be conveyed to them respectively, in fee simple, which obligation and liability still remain in

full force and effect, and are included in the conveyance by your oratrix and your orator William I. Chase, to your orator Nelson Chase, hereinafter mentioned.

And your orators and oratrix further say, that in the life-time of the said Eliza B. Jumel, and on or about the twenty-sixth day of May, in the year one thousand eight hundred and fifty-four, in the empire of France, a treaty concerning a marriage to be thereafter there had and solemnized between the said Eliza Jumel Pery, then named Eliza Jumel Chase, and your orator Paul R. G. Pery, was at the instance and request of the said Eliza B. Jumel moved between the said Eliza B. Jumel on the one part, and the said Paul R. G. Pery, his father, John Edward Pery, and the said Eliza Jumel Chase of the other part, and that upon that occasion, and at the time and place last aforesaid, the said
18 Eliza B. Jumel on her part did, by writing subscribed by her, represent in substance to the said parties of the other part in such treaty that the estate of her, the said Eliza B. Jumel, then amounted in value to two millions of dollars, and that the same was destined at the death of the said Eliza B. Jumel to be divided betwen the said Eliza Jumel Chase and her brother, your orator William I. Chase, and did then and there in like manner undertake and promise unto the said parties of the other part to the said treaty, that if in reliance on such provision for the said Eliza Jumel Chase in such then projected marriage, the said parties of the other part to such treaty would consent to and cause such marriage to be so there had and solemnized, she, the said Eliza B. Jumel, would and thereby did destine to and for the said Eliza Jumel Chase from that day, not only one equal share or half part of such her alleged estate, but further, that if she, the said Eliza Jumel Chase, should be happy in her said proposed marriage, and should thereafter continue to be dutiful and affectionate toward the said Eliza B. Jumel, the said share of said alleged estate so destined to and for her, the said Eliza Jumel Chase, should be increased; and that she, said Eliza B. Jumel, should and would, by her last will and testament, to be in due form of law made and executed, devise, bequeath, and assure such share of such alleged estate to her, the said Eliza Jumel Chase, at and immediately after the death of her, the said Eliza B. Jumel.

And your orators and oratrix further say that the estate of the said Eliza B. Jumel, at the time of such representations by her, was not worth or of the value of one million of dollars, as she then well knew, and that such representation' so in that behalf made by her, the said Eliza B. Jumel, in that respect were willfully and falsely made by her with intent to deceive and defraud the said parties of the other part to such treaty, and to induce them to consent to and solemnize such marriage in reliance thereon.

And your orators and oratrix further say that at the time when such marriage was had and solemnized as hereinafter stated, and at all times prior thereto, the said parties of the other part to such
19 treaty were, and each of them was, wholly ignorant of such fraud and falsehood; and that, fully believing and confiding in such representations, undertaking, and promise of the said Eliza B. Jumel, and in full reliance upon the said representation, and promise, and undertaking, and induced thereby, they, the said parties of the other part to such treaty, did thereafter and on the fifteenth day of July, in the year one thousand eight hundred and fifty-four, at the special instance and request of the said Eliza B. Jumel, in France, aforesaid, consent to such marriage and solemnize the same, and cause it to be solemnized

accordingly between the said Eliza Jumel Chase and the said Paul R. G. Pery.

And your orators and oratrix further say that the said Eliza Jumel Chase, thereafter called Pery, was happy in her said marriage, and thereafter, with regard to the said Eliza B. Jumel, did always, during the life of the said Eliza B. Jumel, continue to be dutiful and affectionate toward the said Eliza B. Jumel; and that the said Eliza B. Jumel's whole estate, at her death, consisted only of property held and owned by her at the time of such representations, promise, and undertaking, or its proceeds, and did not, at the time of such representations, promise, and undertaking, or at such death, exceed in value one million of dollars, and that neither by any last will and testament or otherwise did she, the said Eliza B. Jumel, ever devise, bequeath, or in any way assure to or for the benefit of the said Eliza Jumel Pery or of the said William I. Chase, any part of such estate, or any provision, support, property, or benefit whatever, for either of them; and your orators and oratrix say, claim, and insist, that by reason of such representations, undertaking, and promise, and such marriage in reliance thereon, and such default of her the said Eliza B. Jumel in this behalf, the said Eliza Jumel Pery was, at the death of the said Eliza B. Jumel, well entitled to all the estate, real and personal, of the said Eliza B. Jumel, or left by her, and that to the exclusion of any heirs, next of kin, devisees or legatees of the said Eliza B. Jumel.

20 And your orators and oratrix further say, claim, and insist, that if your oratrix Eliza Jumel Pery was not nor is legally or equitably entitled to such precise and specific remedy as last aforesaid, she, the said Eliza Jumel Pery, at and immediately after the death of the said Eliza B. Jumel, was entitled to recover, have, and receive from the real and personal representatives of the said Eliza B. Jumel, whether such as executors, administrators, devisees, legatees, next of kin, or heirs at law of the said Eliza B. Jumel, or otherwise, for and by reason of such representations, undertaking, and promise of the said Eliza B. Jumel, such marriage, in reliance thereon, and such default of her, the said Eliza B. Jumel, as and for a compensation or damages for such false representation and default, at least the sum of one million dollars, lawful money of the United States, with interest thereon; which claim and demand so accruing to the said Eliza Jumel Pery, as last aforesaid, still remain in full force and effect, and are included in the conveyance by your oratrix to your orator, Nelson Chase, hereinafter mentioned.

And your orators and oratrix further say that, some time after the last-mentioned marriage, and after the year one thousand eight hundred and fifty-five, the said Eliza B. Jumel, then being far advanced in years and subject to many bodily infirmities, exhibited a monomaniacal diminution of regard for your oratrix, and antipathy to your orator, William I. Chase, toward both of whom she had always theretofore manifested and actually entertained a deep and earnest affection.

And your orators and oratrix further say that, shortly after the death of the said Eliza B. Jumel, certain persons, named as executors and devisees therein, set up and insisted upon, as a valid and effectual will of real and personal estate, a certain paper writing bearing date the fifteenth day of May, in the year one thousand eight hundred and sixty-three, purporting to be the last will and testament of the said Eliza B. Jumel, deceased, and to have been made, declared, subscribed, and attested in such due manner and form as to pass real and personal

21 estate; and which said allleged last will and testament neither made or contained any devise, bequest, or disposition in favor of

the said defendant, nor named him in any way, but purported to devise and bequeath nearly the whole real and personal estate of the said Eliza B. Jumel to certain religious and charitable incorporated societies.

And your orators and oratrix further say, that by reason of such monomaniacal diminution of regard and antipathy, and for other sufficient causes, the paper writing last mentioned was, as your orators and oratrix were and are advised, wholly void, and that after the death of the said Eliza B. Jumel, and before the commencement of any of the suits or actions hereinafter mentioned, and on or about the twenty-ninth day of July, in the year of our Lord one thousand eight hundred and sixty-five, William B. Jones, Stephen Jumel Jones, Eliza Jumel Tranchell, and Louisa Jumel Maddox, who were the nephews and nieces and sole and only legitimate heirs at law of the said Eliza B. Jumel, (unless your oratrix and your orator, William I. Chase, were also such heirs,) by their deed of conveyance of that date, did, in due form of law, grant and convey unto your orator, Nelson Chase, all the share and proportion, right, title, and interest, joint or otherwise, of such grantors, and each of them, of, in, and to the estate of the said Eliza B. Jumel, whether real or personal, of which she died seized, possessed, or entitled unto, which, at the making of such last-mentioned grant and conveyance, existed or might thereafter vest in such grantors.

And your orators and oratrix further say, that after the death of the said Eliza B. Jumel, and before the commencement of any suit or action hereinafter mentioned, and on or about the twelfth day of October, one thousand eight hundred and sixty-five, a certain indenture of family settlement between your orators, Nelson Chase and William I. Chase, and your oratrix, Eliza Jumel Pery, both hereinafter mentioned, (with others,) was in due form of law executed by the said parties thereto respectively, under their respective hands and seals, whereby
22 (among other things) all and singular the right, title, and interest of your orator, William I. Chase, and your oratrix, Eliza Jumel Pery, respectively, in all and singular the estate, real and personal, of the said Eliza B. Jumel, at her death, and all claims and demands of your orator, William I. Chase, and your oratrix, Eliza Jumel Pery, or either of them, upon or against the same, and against the said Eliza B. Jumel, deceased, and her representatives, and her estate, real and personal, were conveyed to and vested in your orator, Nelson Chase, in, and upon, and for certain trust purposes, for the use and benefit of your orators and oratrix in the same indenture of family settlement mentioned, expressed, and declared.

And your orators and oratrix further say, that at her death she, the said Eliza B. Jumel, was not, in equity or otherwise, or at law, for her own use or benefit, seized or possessed, or otherwise entitled unto, any lands, tenements, hereditaments, or real estate or effects, which could pass by descent or inheritance, or otherwise, by act or operation of law to any heir or heirs of her, the said Eliza B. Jumel, deceased, or which, in any way, at law or in equity, could be charged or made chargeable for any debt, liability, or duty of the said Eliza B. Jumel, or for any claim or demand against her or her estate, save and except only the lands and premises, with their appurtenances seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly herein above described.

And your orators and oratrix further say, that after the death of the said Eliza B. Jumel, a certain action was prosecuted in the supreme court of the State of New York, by your orator Nelson Chase, and others, against one John Howard Smith and others, the alleged exec-

utors, devisees, and legatees under said paper writing purporting to be the last will and testament of the said Eliza B. Jumel, for the purpose of obtaining a judgment or decree annulling and declaring to be void the said paper writing; and that thereupon the parties in any way interested in supporting such paper writing as such will, accepted
23 and received from your orator, Nelson Chase, the sum of eighty-eight thousand five hundred dollars, in full satisfaction and compensation for such their alleged interest, under said alleged will, and withdrew from the defense of such action; and that afterwards, on or about the fifth day of December, in the year one thousand eight hundred and sixty-six, a judgment or decree was in due form of law had and obtained in the said supreme court in that action to the effect (among other things) that neither the said paper writing, purporting to be the last will and testament of the said Eliza B. Jumel, deceased, nor any part thereof, nor any devise, disposition, or provision purporting to be therein contained, was, as it respects any real estate which was of the said Eliza B. Jumel, deceased, at the time of her death, a valid will, testament, or devise, by her, the said Eliza B. Jumel, deceased, but that the same paper writing, and all pretended or apparent devises, dispositions, and provisions therein contained were and are invalid, null, and void.

And your orators and oratrix further say, that after such judgment or decree, and after the death of the said Eliza B. Jumel, and on or about the twenty-second day of November, in the year one thousand eight hundred and sixty-six, letters of administration of the goods, chattels, and credits which were of the said Eliza B. Jumel, deceased, at the time of her death, were, by the surrogate of the county of New York, in the State of New York, (in which county she, the said Eliza B. Jumel, had her exclusive residence, habitation, and domicil at the time of her death,) in due form of law granted unto William C. Wetmore and William B. Jones; and that they, the said William C. Wetmore and William B. Jones, as such administrators, thereafter, out of the goods, chattels, and credits which were of the said Eliza B. Jumel at her death, and which came to their hands as such administrators, did, before the commencement of this suit or any of the suits or actions hereafter mentioned, pay and fully satisfy and discharge all debts, liabilities, claims, and demands, due or to become due, or existing against the said Eliza B. Jumel
24 at the time of her death, or against her estate, real and personal, or against her heirs, next of kin, executors, or administrators, or other real or personal representatives, (save and except only the claims and demands of your oratrix and of your orator, William I. Chase, in this bill of complaint mentioned,) and did fully administer all and singular the goods, chattels, credits, and effects which were of the said Eliza B. Jumel at the time of her death as aforesaid.

[And your orators and oratrix further say, that all and every the estate, right, title, interest, property, possession, claim, and demand of the said Eliza B. Jumel, at the time of her death, of, in, or to the said lands and real estate seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly above described, were not at the time of the death of the said Eliza B. Jumel, or at any time since, of as much value as one-tenth part of the value of the said lands and premises so conveyed to the said Ambrose C. Kingsland and Isaac P. Martin, and together with all other the goods, chattels, credits, effects, lands, tenements, hereditaments, and estate, and assets, real and personal, or mixed, of every kind and nature, of the said Eliza B. Jumel at her death, and all the estate whatsoever and wheresoever of the defendant, George W.

Bowen, hereinafter more particularly mentioned, were not at the time of the death of the said Eliza B. Jumel, or at any time since, and are not now, of sufficient value to pay or satisfy one-fifth part of the said just claims and demands which accrued to the said Eliza Jumel Pery and William I. Chase respectively as aforesaid for and on account of such fraudulent conveyance by the said Eliza B. Jumel of the said lands and premises fifthly and sixthly above described, and thereby making away with their respective titles and interests in the same so effected by the said Eliza B. Jumel as aforesaid, nor even to the extent of one-fifth part sufficient to purchase or procure for and in order to make restitution in that behalf of the same last-mentioned lands or other lands of equal value in lieu thereof, nor of sufficient value to pay or satisfy even the one-half part of the aforesaid claim and demand which so accrued
25 to the said Eliza Jumel Pery against the said Eliza B. Jumel and her representatives by reason of such representations, promise, and undertaking of the said Eliza B. Jumel on occasion of such treaty of marriage as aforesaid, such marriage in reliance thereon, and such default of the said Eliza B. Jumel in respect thereto.

And your orators and oratrix further] say, that after the death of the said Stephen Jumel, and after such conveyances to the said Michael Werckmeister, and such appointment as aforesaid, and on the twentieth day of August, in the year one thousand eight hundred and forty-two, there were simultaneously executed by the pretended grantors in the same respectively mentioned, and simultaneously recorded in the office of the register in and for the city and county of New York, two pretended deeds of conveyance, bearing date the day and year last aforesaid, each purporting to convey as in the same and hereinafter stated, the said lands and premises with their appurtenances herein first, secondly, and thirdly above described, which two pretended deeds last mentioned (omitting for brevity the descriptions of the said property pretended to be conveyed thereby) were and are in the words and figures following, that is to say:

"This indenture, made this twentieth day of August, in the year of our Lord one thousand eight hundred and forty-two, between Eliza B. Jumel, of the city of New York, widow of Stephen Jumel, late of said city, merchant, of the first part, and Michael Werckmeister, of said city, merchant, of the second part, and Francis Philippon, also of said city, merchant, of the third part, witnesseth: Whereas Mary Jumel Bownes, of the city of New York, (now the wife of Nelson Chase, esquire, attorney at law,) by certain indentures duly made and executed, did heretofore grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm unto the party of the second par', and to his heirs and assigns forever, the land and premises hereinafter described: To have and to hold the same and every part and parcel thereof to him, his heirs and assigns forever. In trust, nevertheless, (amongst other things,)
26 that the party of the second part or his heirs, lease, demise, let, convey, assure, and dispose of all and singular the said premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, intents, and purposes, and in such manner and form as she, the said Elizabeth Brown Jumel (party of the first part to this indenture,) notwithstanding her present or any future coverture as if she were a feme sole shall by any instrument in writing, executed in the presence of any two credible witnesses, order, direct, limit, or appoint, and in case of an absolute sale of said premises, or any part thereof, to pay over the purchase-money to the said Eliza

Brown Jumel or invest the same as she shall order and direct, as by the said indentures or the records thereof in the office of the register of the city and county of New York, will more fully and at large appear. And whereas the said party of the third part hath contracted and agreed with the said party of the first part for the absolute purchase of all the said lands and premises hereinafter particularly described, (being the lands and premises conveyed to the said party of the second part in trust by the deeds above referred to,) with their appurtenances in fee-simple, for the sum of one hundred thousand dollars, lawful money of the State of New York:

"Now, therefore, this indenture witnesseth, that the said party of the first part, in consideration of the premises and the sum of one hundred thousand dollars to her in hand paid by the said party of the third part, the receipt whereof is hereby acknowledged, pursuant to and in execution of the power and authority reserved, vested, and given to and in her by the indenture hereinbefore mentioned, and by force and virtue thereof and of all and every other power and authority to her in that behalf reserved or her in any wise thereunto enabling, hath ordered, directed, limited, and appointed, and by this instrument in writing, under her hand and seal, and by her duly executed, signed, sealed, and delivered in the presence of two credible witnesses, who have hereunto set and
27 subscribed their names as witnesses thereto, doth absolutely and irrevocably order, direct, limit, and appoint that the said party of the second part by these presents convey, assure, and dispose of the said premises hereinafter described to the said party of the third part in the manner and form and for the price herein expressed and contained. And the said party of the second part in consideration of the premises and of one dollar to him in hand paid by the said party of the third part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in pursuance of the order, direction, limitation, and appointment herein contained, hath granted, bargained, sold, remised, released, conveyed, assured, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, remise, release, convey, assure, enfeoff, and confirm unto the said party of the third part and to his heirs and assigns forever, all, &c.

"Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and all the right, title, and interest, claim and demand of the said party of the second part, of, in, and to the said premises. To have and to hold the same, with the appurtenances, to the said party of the third part, and to his heirs and assigns, in fee simple forever. And the said Michael Werckmeister, party of the second part, doth for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the third part, his heirs and assigns, that the said lands and tenements now are, and from henceforth shall continue, remain, and be, unto the said party of the third part, his heirs and assigns, free and clear, and freely and clearly acquitted and discharged of and from all former and other grants, charges, or incumbrances made, suffered or committed by him, or any other person lawfully claiming or to claim, by, from, or under him. And the said Eliza B. Jumel, party of the first part, for myself and my heirs, do hereby covenant and agree to and with the said party of the third part and his heirs and assigns, that the said party of the second part is lawfully seized of a good, indefeasible estate of inheritance in the said premises, and has full right and power to sell
28 and convey the same in fee simple absolute; that the said premises are clear and free of all incumbrances; that the said party of

the third part may forever hereafter have, hold, possess, and enjoy the same without any suit, molestation, or interruption by any person whatever claiming any lawful right therein; and that the said parties of the first and second parts, and all persons claiming under them, or either of them, will at any time hereafter, at the reasonable request and expense of the said party of the third part, his heirs or assigns, make all such further assurances for the more efficient and effectual conveying the said premises, with the appurtenances, as may be reasonably required by him or them; and that the said party of the first part will warrant and defend the said premises, with the appurtenances, unto the said party of the third part, and his heirs and assigns forever.

"In witness whereof, we have hereunto set our hands and seals the day and year first above written.

"ELIZA B. JUMEL, [L. S.]
"M. WERCKMEISTER, [L. S.]

"C. F. A. HINRICHS.
"ABNER COOK, JR.

"STATE OF NEW YORK,
"*City and County of New York, ss:*

"On this 22d day of August, 1842, before me came Abner Cook, junior, the subscribing witness to the foregoing conveyance, to me known, and being by me duly sworn, said that he resided at No. 65 Bank street, in the city of New York; that he saw Eliza B. Jumel and Michael Werckmeister execute the said conveyance; that he knew them to be the individuals described in and who executed the same; and that he, said Cook, became the subscribing witness thereto—which is to me satisfactory evidence of the due execution thereof.

"JOHN S. WOODWARD,
"*Com'r of Deeds, &c.*

29 "Recorded in the office of the register of the city and county of New York, in lib. 427 of Cons., page 459, August 27th, 1842, at 30 minutes past 10 a. m.

"Examined by

"J. SHERMAN BROWNELL,
"*Registrar.*

"This indenture, made this twentieth day of August, in the year of our Lord one thousand eight hundred and forty-two, between Francis Philippon, of the city of New York, of the first part, and Eliza B. Jumel, of the said city, widow of the late Stephen Jumel, of said city, merchant, of the second part, witnesseth, that the said party of the first part, for and in consideration of one dollar to him in hand paid by the said Eliza B. Jumel, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm unto the said Eliza B. Jumel, and to her heirs and assigns forever,

"All, &c.,

"Together with all and singular the hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and every part and parcel thereof; and also all the estate, right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of the said party of the first part, in, to, or out of the said lands, tenements and hereditaments, and all and

singular other the premises hereinbefore mentioned, with the appurtenances, unto the said Eliza B. Jumel, her heirs and assigns, and to his and their only proper use and behoof. And the said party of the first part doth for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the second part, her heirs, executors, administrators, and assigns, in manner and form following, that is to say: that the said Eliza B. Jumel, her heirs
30 and assigns, shall and may peaceably and quietly have, hold and enjoy the said lands, tenements, hereditaments, and premises, and every part and parcel thereof, without the let, suit, trouble, eviction or disturbance of the said Francis Philippon, his heirs or assigns, or of or by any other person or persons lawfully claiming or to claim the same, from, by, or under, or in trust for him, them, or any of them. And that the said lands, tenements, hereditaments, and premises, and every part and parcel thereof, now are, and from henceforth shall continue and remain, and be unto the said Eliza B. Jumel, her heirs and assigns, free and clear, and freely and clearly acquitted, exonerated, and discharged of, from, and against all former and other gifts, grants, bargains, sales, mortgages, estates, titles, troubles, charges and incumbrances whatsoever, made, done, committed, occasioned or suffered by the said Francis Philippon, or by any person lawfully claiming or to claim by, from, or under him, or by his, their, or any of their act, means, assent or procurement. And the said Francis Philippon and his heirs all and singular the aforesaid lands, tenements, hereditaments, and premises, and every part and parcel thereof, unto the said Eliza B. Jumel, her heirs and assigns, shall and will warrant, and by these presents forever defend.

"In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

"FRS. PHILIPPON. [L. S.]

"In the presence of the

"The words 'ten degrees fifteen,' on 1st page, written over an erasure, and 'to the,' on 2d page, erased, and '1843,' on 3d page, erased, and '1812,' on same page, interlined, and 'and,' on 6th page, erased before execution.

"ABNER COOK, JR.,
"65 *Wall Street.*

"*State, City and County of New York, ss:*

"On this 22d of August, 1842, before me came Abner Cook,
31 junior, the subscribing witness to the foregoing conveyance, to me known, and being by me duly sworn, deposed that he resided at No. 65 Bank street, in the city of New York; that he saw Francis Philippon execute the said conveyance; that he knew him to be the individual described in and who executed the same, and that he, said Cook, became the subscribing witness thereto, which is satisfactory evidence to me of the due execution thereof.

"JNO. S. WOODWARD,
"*Commissioner of Deeds, &c.*

"Recorded in the office of register of the city and county of New York, in lib. 427 of Cons., page 463, August 27th, 1842, at 30 minutes past 10 a. m.

"Examined by

"J. SHERMAN BROWNELL,
"*Registrar.*"

And your orators and oratrix further [say that no pecuniary or other valuable consideration was, in fact, paid or given by or on behalf of the grantee named in either of the said last-mentioned two pretended deeds of conveyance, for or on account of the conveyance purported to be by the same made; that such two pretended deeds were made as parts of one transaction, fraudulently and unlawfully conceived, designed and intended by the actors therein to defeat the right, title, and interest, legal or beneficial, of the said Mary Jumel Chase and her heirs, under and by virtue of the trusts, so as aforesaid conferred upon said Michael Werckmeister, and the aforesaid deed and instrument of appointment in that behalf, so as aforesaid executed by the said Eliza B. Jumel; and that Francis Philippon, named in the said two pretended deeds, bearing date on the day and year last named, acted in such transaction with full notice and knowledge of such trusts and appointment, but without any personal interest whatever, and merely as a voluntary aid and assistant to the said Eliza B. Jumel, at her request, in the fraudulent and unlawful conception, design and intention last mentioned; and that
32 the said two pretended deeds last mentioned were and are at law and in equity wholly inequitable, illegal, fraudulent, and wholly and absolutely void as against your orators and oratrix, and every of them, and that if, by any possible construction, it may be held that by force of the same two pretended deeds any title or intereet vested in the said Eliza B. Jumel, and passed by descent or inheritance from her, and is now vested in any person other than your orators or oratrix, or some or one of them, the same was and is held in trust for the sole use and benefit of your oratrix and your orator, William I. Chase, and under an obligation in equity to convey and assure the same to them, or one of them, or to your orator, Nelson Chase, as grantee thereof under the aforesaid indenture of family settlement.]

And your orators and oratrix further say, that after the death of the said Stephen Jumel, and after such conveyances by the said Mary Jumel Bownes to the said Michael Werckmeister, and after such appointment as aforesaid, and on or about the tenth day of January, in the year one thousand eight hundred and thirty-four, a certain deed of that date was executed by the said Eliza B. Jumel, by her then name of Eliza B. Burr, and the said Michael Werckmeister, whereby, pursuant to an appointment and direction to that effect of the said Eliza B. Jumel, therein assumed to be by her in her said then name of Eliza B. Burr given, the said Michael Werckmeister assumed to grant and convey unto one Alexander Hamilton, in fee-simple, all and singular the said lands and premises thirdly above in this bill of complaint described, as may more fully appear by the same deed recorded in the office of the register in and for the city and county of New York, in liber number three hundred and nine of conveyances, beginning at page two hundred and thirty-four of that liber or book.

And your orators and oratrix further say, that in said last-mentioned deed it was, among other things, recited that the said Mary Jumel Chase, by her said name of Mary Jumel Bowne, had granted and conveyed in fee-simple to the said Michael Werckmeister, on pre-
33 cisely similar trusts as those which she had so as aforesaid declared in respect of said lot number six on Loss' map aforesaid; not only such lot so numbered six, but also the eight other lots on the same map, so as aforesaid respectively numbered seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen.

And your orators and oratrix further say that the said Alexander Hamilton shortly afterwards, and before the execution of the deed here-

inafter next mentioned, ascertained that the said Eliza B. Jumel and Michael Werckmeister had not good right, power, or authority to make any such grant or conveyance to him, and required and compelled the said Eliza B. Jumel to rescind and annul the said transaction with him, whereupon, on or about the twenty-first day of October, in the year last aforesaid, the said Eliza B. Jumel and Michael Werckmeister, or one of them, refunded to said Alexander Hamilton the consideration money which he had given for such pretended conveyance to him, and the said Alexander Hamilton executed, under his hand and seal, an instrument bearing date the day and year last aforesaid, purporting to be a deed of rescission and reconveyance, which recited the last-mentioned conveyance to him, and purported to grant and convey to the said Michael Werckmeiser, in fee-simple, all and singular the said lands and premises now thirdly above in this bill of complaint described, upon the same trusts and to and for the same uses and purposes upon and for which the same were held by the said Werckmeister previously to the making of such pretended conveyance to him, the said Aexander Hamilton, which instrument, purporting to be such deed of reconveyance by the said Alexander Hamilton, was recorded in the office of the same register, in liber three hundred and sixty-eight of conveyances beginning at page ninety-four of *of* that liber or book.

And your orators and oratrix further say that the said two last-mentioned instruments, respectively purporting to be deeds of conveyance, were and are fraudulent and void as against your orators and oratrix, and every of them, at law and in equity, and that if by any construction it may be held that by force of the same, or either of them, any title or interest vested in the said Eliza B. Jumel, and passed by descent from her, and is now vested in any other person than your orators and oratrix, or some or one of them, the same was and is held in trust for the sole use and benefit of your orators and oratrix, and under an obligation, in equity, to convey and assure the same to them, or one of them, or to your orator, Nelson Chase, as grantee thereof, under the aforesaid indenture of family settlement.

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And your orators and oratrix further say that the said Eliza B. Jumel, at or before her marriage with the said Stephen Jumel, had little or no property, and never, after that event, or within many years, had any intercourse of any kind, direct or indirect, with any relation by blood or affinity of her, said Eliza B. Jumel, (if any such there were or was in life,) save and except only her sister Maria Jones, formerly of the city of New York, now deceased, and the husband and the children and descendants of said Maria, and the spouses of such children or descendants, respectively.

And your orators and oratrix further say that in consequence of such her condition, and in the course of the aforesaid litigation touching the said paper writing so alleged and pretended to be a last will and testament, untrue suggestions and reports were made and extensively circulated that the said Eliza B. Jumel had left, at her death, an estate of vast amount, descendible to her heirs, whoever they might be, and that it was difficult to discover what person or persons, if any, was or were entitled to take lands from her by inheritance.

And your orators and oratrix further say that such reports tempted and induced a great number of persons falsely pretending to be heirs-at-law of the said Eliza B. Jumel, to set up claims as such to lands in this bill of complaint mentioned, which were supposed to have been left by the said Eliza B. Jumel, descendible to her heirs, and which were in the possession of your orator, Nelson Chase, in privity and with the

35 consent of your oratrix and your orator, William I. Chase; that sundry of such claims prosecuted by action of ejectment at law have been silenced and ended by verdict and judgment at law against the claimants; but at enormous and irreparable loss, inconvenience, trouble, and labor to your orator, Nelson Chase, the poverty of such defeated claimants preventing a recovery of even the mere taxable costs adjudged against them.

And your orators and oratrix further say, that such claims of said pretended heirs have generally, if not exclusively, been prosecuted by speculators therein under contracts between the said claimants and such speculators, whereby the latter have bargained for a proportional share of any recovery or gains on such claims, either by judgment, settlement, or otherwise.

And your orators and oratrix further say that the defendant, George W. Bowen, who is an inhabitant of Providence, in the State of Rhode Island, and a citizen of that State, sets up and pretends that he is an illegitimate son of the said Eliza B. Jumel, and the only child which she ever had, and claims and pretends that he is therefore her sole heir-at-law, and entitled to take, by descent, any lands and real estate in the State of New York, descendible to her heirs, of which she may have died seized.

And your orators and oratrix further say that the said George W. Bowen now states and pretends that he was born in a house of prostitution in Providence aforesaid, on the ninth day of October, in the year one thousand seven hundred and ninety-four, his mother then being a notorious young street-walker and prostitute in Providence aforesaid, and that his father was one Reuben Ballou, whose wife was the keeper of such house; and further sets up and pretends that he was finally and utterly deserted by his said mother when he was only a few weeks or months old, and admits that he never afterwards had, directly or indirectly, any intercourse, communication, or correspondence with her, or saw her, except as hereinafter mentioned; and further admits that heal ways resided

36 in Providence aforesaid, was notoriously and by common fame a bastard, married a native of Providence when very young, and lived there with her for nearly fifty years, but never told her that he had any connection with or relationship to the said Eliza B. Jumel, notwithstanding that, during a long term of years, he had very often seen said Eliza B. Jumel in the public streets of the village of Saratoga Springs, and on some occasions when he was there walking with his said wife, and when his said wife spoke admiringly of the said Eliza B. Jumel's elegance in dress.

And your orators and oratrix further say, that since the aforesaid judgment and decree annulling the said pretended last will and testament of the said Eliza B. Jumel, [deceased, the said George W. Bowen has pursued and harassed your orator, Nelson Chase, by causing numerous suits and actions at law to be prosecuted against him and his tenants for the recovery of the said lands and premises first, secondly, thirdly, fourthly, seventhly, eightly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly above described, that is to say: First, a certain suit or action of ejectment brought by the said George W. Bowen against your orator, Nelson Chase, in this court, on the twenty-first day of April, in the year one thousand eight hundred and sixty-eight, to recover the possession of the lands and premises thirdly and fourthly above described, in which suit or action your orator, Nelson Chase, duly appeared, by his attorney, and interposed his defence thereto, and made preparations for the trial thereof; which suit or action afterwards, and on or about the

second day of February, in the year one thousand eight hundred and sixty-nine, was, according to the course and practice of this court, called in its order on the calendar for trial, your orator, Nelson Chase, being in attendance in this court with his attorney and counsel, ready and desirous to have the same tried; but the said George W. Bowen, then and there wholly failing and neglecting to appear and prosecute the same, which was accordingly afterwards and on the motion of your orator, Nelson Chase, ordered by this court to be dismissed for
37 such default of the said G'orge W. Bowen, unless the said George W. Bowen should stipulate to try the same at the then next term of this court, which stipulation he, the said George W. Bowen, duly gave, whereupon, afterwards, the same suit or action was again in its order called for trial in this court, your orator, Nelson Chase, being then again as aforesaid present with his attorney and counsel, and ready and willing to proceed with such trial; but the said George W. Bowen again, in like manner as before mentioned, failing and neglecting to appear and prosecute such his suit or action, such proceedings were thereafter thereupon had in this court in that suit or action that, afterwards, and on or about the fourteenth day of September, in the year one thousand eight hundred and sixty-nine, such suit or action was, by the final order and judgment of this court, dismissed for the said last-mentioned default of the said George W. Bowen to prosecute the same; and also, secondly, a certain other suit or action of ejectment brought by the said George W. Bowen against one Joseph Crocheron, in this court, on the same twenty-first day of April, one thousand eight hundred and sixty-eight, to recover the possession of the lands and premises seventhly above described, which your orator, Nelson Chase, had since the said judgment or decree annulling the said pretended will, and prior to the bringing of the suit last mentioned, conveyed in fee-simple with the usual full covenants of warranty; the defence of which last-mentioned suit or action, as your orator Nelson Chase was so bound in law to do, he assumed, and retained and caused his attorney to appear therein, and interposed a defence thereto, and made preparations for the trial thereof; and which last-mentioned suit or action afterwards was called for trial in this court at the same times and in the same manner as said first-mentioned suit or action; and your orator, Nelson Chase, appearing on such last-mentioned call, with his attorney and counsel, in the same manner ready and desirous to proceed with such trial; but the said George W. Bowen failing and neglecting, in like manner as first-
38 above mentioned, to appear and prosecute, and a similar stipulation as aforesaid being given, as more fully mentioned and described, in respect of the suit or action of said Bowen first above mentioned, such proceedings were thereafter had in the said suit or action against the said Joseph Crocheron that, afterwards, and on or about the fourteenth day of September, in the year one thousand eight hundred and sixty-nine, the same was by the final order and judgment of this court dismissed for such default of the said George W. Bowen to prosecute the same; and also, thirdly, a certain other suit or action of ejectment, brought by the said George W. Bowen against one Rowland Timpson, in this court, on the same twenty-first day of April, one thousand eight hundred and sixty-eight, to recover the possession of the lands and premises eighthly above described, which your orator, Nelson Chase, had, since the said judgment or decree annulling the said pretended will, and prior to the bringing of the last-mentioned suit or action, conveyed with the usual full covenants of warranty; the defence of which suit or action your orator, Nelson Chase, as he was so as afore-

said bound so to do, assumed and retained and caused his attorney to appear for the defendant therein, and interposed a defence thereto, and made preparations for the trial thereof; and which last-mentioned suit or action was afterwards called for trial at the same times and in the same manner as in said other suits or actions of the said George W. Bowen, and your orator, Nelson Chase, appearing with his attorney and counsel, in the same manner as in such other suits or actions, ready and desirous to proceed with such trial, and that the said George W. Bowen in like manner failing and neglecting to appear and prosecute the same, and a similar stipulation being in like manner as aforesaid given, as more fully mentioned and described, in respect of the suit or action of said George W. Bowen, as first-above mentioned, such proceedings were thereafter had in this court in the said suit or action against Rowland Timpson that, afterwards, and on the fourteenth day of September, in the year one thousand eight hundred and sixty-nine, the same suit or action was, by the final order and judgment of this court, dismissed for the said default of the said George W. Bowen to prosecute the same; and also, fourthly, a certain other suit or action in the nature of an action of ejectment, brought by the said George W. Bowen jointly with one Ann Eliza Vandervoort, against your orator, Nelson Chase, in the court of common pleas in and for the city and county of New York, in the State of New York, on or about the sixth day of January, in the year one thousand eight hundred and seventy, for the recovery of the said lands and premises first, secondly, thirdly, fourthly, seventhly, and eighthly above described.

39

And your orators and oratrix further say that the said last-mentioned suit or action was brought in pursuance of a corrupt and champertous bargain, combination, and conspiracy between the said George W. Bowen and the said Ann Eliza Vandervoort, by which it was agreed and contemplated between the said George W. Bowen and the said Ann Eliza that she, the said Ann Eliza, should furnish testimony and evidence in such suit or action to support the same, and should receive in consideration thereof and as a compensation therefor, one-half of whatever fruits, profits, or advantages should result from the prosecution of such suit or action, and that it was pretended and alleged in the complaint of the said plaintiffs in said last-mentioned suit or action that the said Ann Eliza and the said George W. Bowen were jointly seized of the lands and premises so claimed in the said last mentioned suit or action.

And your orators and oratrix further say that your orator, Nelson Chase, appeared in such last-mentioned suit or action by his attorney and interposed his defence to the same, and made preparations for the trial thereof, and that on or about the twelfth day of May, one thousand eight hundred and seventy-one, pursuant to an order made by the said court of common pleas, the said suit or action last mentioned was discontinued as respects the said Ann Eliza Vandervoort, and her name as plaintiff was stricken out of the same, and that the same was left pending as a suit or action by the said George W. Bowen as sole plaintiff therein against your orator, Nelson Chase; and that afterwards, and after divers motions and proceedings involving great labor on the part of your orator, Nelson Chase, and his attorney and counsel, and great expense to your orator, Nelson Chase, in and about such defence against such last-mentioned suit or action, the same was in the month of June, in the year one thousand eight hundred and seventy-one, duly set down and appointed to be tried for a certain day in the said month of June, and that your orator, Nelson Chase, was on

40

that day prepared to proceed with the trial thereof,] but that before the same was or could be called for trial, he, the said George W. Bowen, on the pretence that he had reason to believe, and did believe, that he could not obtain justice in the said court of common pleas, and in the manner for that purpose prescribed by the provisions of the act of Congress, approved March second, one thousand eight hundred and sixty-seven, and entitled "An act to amend an act entitle' 'An act for the removal of causes in certain cases from State courts,' approved July twenty-seven, one thousand eight hundred and sixty-six," caused the said last-mentioned suit or action to be removed into this court; and that after such removal the said last-mentioned suit or action was brought to trial in this court on the twenty-third day of January, in the year one thousand eight hundred and seventy-two; and that such trial continued with the exception of an interruption of a few days, caused by the illness of a juror, until the sixteenth day of March in the year last aforesaid, when it was delivered to the jury, who failed to agree upon a verdict. And your orators and oratrix further say that afterwards the said last-mentioned suit or action was again brought to trial in this court, and that such trial has not yet been concluded, nor has any verdict or judgment been had in that suit or action.

And your orators and oratrix further say that the said George W. Bowen, since the aforesaid judgment or decree annulling the said
41 pretended last will and testament, has caused, in like manner as his said above-mentioned suits and actions, certain other like vexatious suits and actions at law to be prosecuted, that is to say, fifthly, a certain other suit or action in the nature of an action of ejectment brought by the said George W. Bowen, on or about the thirteenth day of September, one thousand eight hundred and seventy, in the supreme court of the State of New York, against your orator, Nelson Chase, and one John Coleman, his tenant, to recover the possession of the said lands and premises ninthly above described, in which said suit the county of Saratoga, in the State of New York, was named as the place of trial; that your said orator, Nelson Chase, assumed and undertook the defence thereof, as well on behalf of the said Coleman as on his own behalf, and retained and caused his attorney to appear therein, and interposed a defence thereto, both for himself and said Coleman, and that afterwards, on the application of your orator, Nelson Chase, the place of trial of such last-mentioned suit or action was, on or about the eighth day of January, one thousand eight hundred and seventy-one, by an order of the said supreme court, duly changed to the city and county of New York, and that afterwards, and on or about the twentieth day of June, one thousand eight hundred and seventy-one, the said George W. Bowen, on the like pretence as above mentioned, that he had reason to believe, and did believe, that he could not obtain justice in the said supreme court, and in the manner for that purpose prescribed by the provisions of the act of Congress hereinbefore mentioned, caused the said last-mentioned suit or action to be removed to this court, where it is still pending and undetermined.

And also, sixthly, a certain other suit or action in the nature of an action of ejectment brought by the said George W. Bowen, on or about the same thirteenth day of September, one thousand eight hundred and seventy, in the said supreme court, against your orator, Nelson Chase, and one Jacob Gleason, his tenant, to recover the possession of the lands and premises tenthly, twelfthly, thirteenthly, and four-
42 teenthly above described, in which suit the county of Saratoga, in the State of New York, was named as the place of trial; and that

your orator, Nelson Chase, assumed and undertook the defence thereof, as well on behalf of the said Gleason as on his own behalf, and retained and caused his attorney to appear and interpose a defence thereto, both for himself and said Gleason, and that afterwards, on the application of your orator, Nelson Chase, the place of trial of such last-mentioned suit was, on or about the eighth of January, one thousand eight hundred and seventy-one, duly changed to the city and county of New York, and that afterwards and on or about the twentieth day of June, one thousand eight hundred and seventy-one, the said George W. Bowen, upon the like pretence, that he had reason to believe, and did believe, that he could not obtain justice in the said supreme court, and in the manner prescribed by the provisions of the act of Congress hereinbefore mentioned, caused such last mentioned suit or action to be removed into this court, where it is still pending and undetermined.

And also, seventhly, a certain other suit or action, in the nature of an action of ejectment, brought by the said George W. Bowen, on or about the same thirteenth day of September, one thousand eight hundred and seventy-one, in the said supreme court, against your orator, Nelson Chase, and one John Penfield, his tenant, to recover the possession of certain lands and premises, eleventhly above described; in which suit the county of Saratoga was named as the place of trial; that your orator, Nelson Chase, assumed and undertook the defence thereof, as well on behalf of the said Penfield as on his own behalf, and retained and caused his attorney to appear therein, and interpose a defence thereto, both for himself and said Penfield; and that afterwards, on the application of your orator, Nelson Chase, the place of trial of such last-mentioned suit or action was, on or about the eighth day of January, one thousand eight hundred and seventy-one, by an order of the said supreme court, duly changed to the city and county of New York; and that afterwards, and on or about
43 the twentieth day of June, one thousand eight hundred and seventy-one, the said George W. Bowen, on the like pretence, that he had reason to believe, and did believe, that he was unable to obtain justice in the said supreme court, and in the manner for that purpose prescribed by the provisons of the act of Congress hereinbefore mentioned, caused the said last-mentioned suit to be removed into this court, where it is still pending and undetermined.

And your orators and oratrix further say that the said suit or action in the name of the said George W. Bowen and Ann Eliza Vandervoort, was commenced by attorneys and counsellors who thereafter relinquished all connection with the same; and thereupon such suit or action, before the name of said Ann Eliza Vandervoort was so stricken out, passed under the control and management of other attorneys and counsel, who as such commenced the suits or actions in the name of said George W. Bowen, fifthly, sixthly, and seventhly above mentioned, and have hitherto acted as such attorneys and counsellors in the said four suits or actions now depending in this court.

[And your orators and oratrix further say, that exclusively of any interference or control of the said George W. Bowen, such four pending suits or actions have hitherto been and still are managed, controlled, directed, and carried on by certain persons other than the said George W. Bowen, under and in pursuance of contracts between them and the said George W. Bowen, whereby the said last-mentioned persons, champertously speculating in the said pretended claims of the said George W. Bowen, agreed to bear all or nearly all the trouble and labor of prosecuting such pretended claims, and to defray all the expense thereof, for and in consideration of the one-half part, or some other large portion of

all gains that should or might result from such pretended claims, either by judgment or settlement, in and by such contracts agreed on the part of the said George W. Bowen to be therefor paid and allowed to such last-mentioned champertously speculating persons.

44 And your orators and oratrix further say that said suits and actions at law which are now pending are, under and in pursuance of such champertous contracts with the said George W. Bowen, as last aforesaid, in the charge, management and control of such last-mentioned champertously speculating persons other than the said George W. Bowen, but who are conspiring with him to vex and harass your orators and oratrix in the premises, and who are citizens of the State of New York, and for that reason and by reason of the nature of this suit cannot by your orators and oratrix be made defendants herein.

And your orators and oratrix further say that neither the said George W. Bowen, nor the said other persons so conspiring with him, have any expectation of any ultimate recovery in any suit or action on such pretended claims of the said George W. Bowen, but do entertain the hope and expectation of being able to vex and harass your orators and oratrix by the suits and actions so pending as aforesaid, and by that means to compel them or your orator, Nelson Chase, in their and his own behalf, to give and bestow upon such conspirators some large sum or sums of money as a consideration for the relinquishment of the pretended title of the said George W. Bowen as such pretended heir at law to the lands and real estate so sued for in said pending suits or actions respectively, and, for the purpose of so vexing and harassing your orators and oratrix, have kept on foot in respect of each of the said now pending suits and actions in the name of said George W. Bowen, notices of suit pending, in the form and filed as required by the laws of the State of New York, and have associated with themselves in the prosecution of such suits and actions by and through some interested motives divers persons of vicious habits and immoral life and conversation, who in such pending suits and actions have, to the knowledge of the said George W. Bowen and his said fellow-conspirators, repeatedly committed perjury in said pending suits or actions, and are manifestly ready and willing to commit

45 perjury on any trials that may be had in said pending suits or actions as frequently as may be needful to promote the said purpose and design of vexing and harassing your orators and oratrix as aforesaid.]

And your orators and oratrix further say that the only material issue of fact which has been raised or is capable of being raised in any of the said pending suits or actions, or in this suit, on which there could be any serious conflict of testimony, is on the said pretence of the said George W. Bowen that he was born of the said Eliza B. Jumel.

And your orators and oratrix further say that on the first trial of the suit or action fourthly above mentioned there was produced, as evidence for and on behalf of the said George W. Bowen, a deposition of one Joseph Perry, a witness examined for and on behalf of the said George W. Bowen as such plaintiff, at Providence aforesaid, pursuant to the acts of Congress in that behalf, who testified that he was born in Providence aforesaid, resided there from his birth, went to school there, learned his trade there, and did not depart therefrom until some years after his majority; was in his boyhood intimate and a playmate with the said George W. Bowen; went to the same school with him, and knew him whilst he, said Joseph Perry, in his minority was learning his trade in Providence aforesaid; that in connection with such alleged acquaintance and intimacy the said Joseph Perry further testified in

that deposition that the said Eliza B. Jumel, at a period subsequent to her said alleged desertion of said George W. Bowen, visited the aforementioned house in Providence, and there spoke of the said George W. Bowen, and interested herself in his plays and pleasures, and many years subsequently, in a kind and considerate manner, entertained at her dwelling-place or homestead aforesaid, in the city of New York, an application made to her by said Joseph Perry to supply the said George W. Bowen, as her son, with pecuniary aid in his business. And your orators and oratrix further say that thereafter on such trial your orator Nelson Chase, occupied many days upon the point, and by the tes-
46 timony of more than seventeen witnesses thereto, completely established, that the narrative so given by said Joseph Perry as a witness was wholly false and fictitious, so that the counsel for the plaintiff in that action were afterwards obliged to and did admit and assert to the jury on that trial that the said Joseph Perry was, in the whole body of his said testimony, corrupt and perjured.

And your orators and oratrix further say that on such trial, and before the production of any evidence impeaching the said Joseph Perry, the said George W. Bowen, as a witness, fully and expressly confirmed and verified the statements of said Joseph Perry as to such their mutual acquaintance and intimacy in youth, in Providence; all of which statements were so thereafter shown and in substance so as aforesaid admitted to be false and fictitious, he, the said Joseph Perry, never having been in Providence or Rhode Island, aforesaid, during his minority; and your orators and oratrix say that said George W. Bowen was on the stand as a witness on such trial subsequent to such contradiction of said Joseph Perry, but did not in any way attempt to explain or extenuate his own criminality in giving such false testimony as aforesaid.

And your orators and oratrix further say that the said Ann Eliza Vandervoort, who was so procured as an auxiliary, as aforesaid, by the said George W. Bowen, and was united with him as a co-plaintiff in the said action in the said court of common pleas, was duly examined as a witness for the plaintiffs in that action, and after having testified that the said Eliza B. Jumel acknowledged in her hearing that one Lavinia Jones, the mother of such witness, but then deceased, was a sister of her, the said Eliza B. Jumel, did further give in evidence many pretended statements and declarations of said Lavinia, to the effect that said Eliza B. Jumel was the mother of said George W. Bowen, and that the said Ann Eliza Vandervoort did thereupon further testify that said Lavinia had also declared to her, said witness, that during the revolutionary war General George Washington, then being in active military service,
47 had occasion to visit the said house in Providence, and there saw the said Eliza B. Jumel, and begot upon her the said George W. Bowen.

And your orators and oratrix further say that it is and has been throughout the controversies with said George W. Bowen, proven repeatedly and stands conceded by all parties, that the said Eliza B. Jumel could not have been eight years old when the said revolutionary war terminated.

[And your orators and oratrix say that notwithstanding the aforesaid palpable evidences of fraud, falsehood, and wickedness in the preparation and production of evidence by and for the said George W. Bowen and his said confederates, and a multitude of similar evidences which have from time to time appeared in the production of the same and other witnesses for the plaintiff in said pending suits and actions, the said George W. Bowen and his said confederates persist in endeavoring

by such and the like means to urge the affirmative of the said issue as to the maternity of the said George W. Bowen, for the purpose as your orators and oratrix claim, insist, and say, of vexing and harrassing your orators and oratrix with the expense, delay, and vexation incident to repeated trials of that issue.]

[And your orators and oratrix claim, insist, and say that the said issue is of no substantial importance or any pecuniary consequence as between the said George W. Bowen and your orators and oratrix, inasmuch as from the facts and circumstances aforesaid it appears that if the said George W. Bowen was in fact the sole heir at law of the said Eliza B. Jumel, he would be bound, in compliance with the aforesaid trusts declared in the said conveyances by said Mary Jumel Chase, and the said deed of appointment, to grant and convey in fee-simple to your oratrix and your orator, William I. Chase, or to their said grantee, your orator, Nelson Chase, all and singular any right, title, or interest that could be construed or held to have come to him by inheritance from the said Eliza B. Jumel, in and to all and singular the said lands and premises, with their appurtenances, which were so as aforesaid
48 conveyed by said Mary Jumel Chase to the said Michael Werckmeister, and also to apply all other estate, real or personal, which might have come to him, said George W. Bowen, from the said Eliza B. Jumel, as her heir at law, or next of kin, or child, in and towards satisfaction and discharge of the claims and demands which so as aforesaid accrued to your oratrix and your orator, William I. Chase, respectively.]

And your orators and oratrix further say that the said George W. Bowen has not, in the State of New York or elsewhere than in Rhode Island, any property or estate save his said pretended claim to the said property of said Eliza B. Jumel; that he is not engaged in any occupation or business, and has no occasion to visit or come within the State of New York, nor ever does come within the same except for the purpose of attending to or promoting the said now pending suits or actions.

[And your orators and oratrix further say that it is claimed by the said George W. Bowen and his said confederates, that by the strict rules administered in courts of common law, the technical legal estate in all and singular the said lands and premises so granted to the said Michael Werckmeister, is vested in him, the said George W. Bowen, if he be such heir at law as he pretends, and that even though your orators and oratrix, or some of them, be the equitable and beneficial owners thereof, he, the said George W. Bowen, is entitled to recover the same at law in such suit or action in which he is plaintiff fourthly above mentioned.

And your orators and oratrix further say that in respect to the claims and demands so accruing to your oratrix and your orator, William I. Chase, the said George W. Bowen and his said confederates claim and insist that the same are only enforcible through the remedial action in respect thereto of a court of equity, and that, however perfect such claims and demands may be, and notwithstanding their sufficiency in effect and amount entirely to absorb all estate, right, title, or interest in any estate, real or personal, of the said Eliza B. Jumel, which he, the said George W. Bowen, might claim as heir at law and next of
49 kin of the said Eliza B. Jumel, yet your orators and oratrix must submit to the delay, vexation, cost, labor, and embarrassment necessarily attendant upon the trial of repeated issues at law and other litigation as to the fact of said pretended heirship.

And your orators and oratrix further say, that the motive, object, and intent of the said George W. Bowen and his said confederates in urging and insisting upon such trials at law of such heirship so alleged by him and so questioned and denied by them as aforesaid alleged, is to compel your orators and oratrix to pay to said George W. Bowen and his said confederates some large amount of money in order to bring such their litgation as aforesaid to an end by a release or relinquishment by him, said George W. Bowen, of such his pretended claims.]

And your orators and oratrix further say, that the suit or action at law of the said George W. Bowen fourthly above mentioned was brought to trial in this court for the second time on the ninth day of December, in the year one thousand eight hundred and seventy-two, which trial is, at the filing of this bill of complaint, still pending, the issue therein not having been as yet passed upon by the jury.

[And your orators and oratrix further say, that the notoriety given to the said pretended claim of the said George W. Bowen has excited the cupidity of very many persons possessing a like desperate and immoral character as the said Joseph Perry, and induced them to tender themselves to the said George W. Bowen and his confederates as ready to give testimony of pretended facts which never actually occurred, but which have some tendency to support such pretended claim; that the said George W. Bowen and his said confederates have, in many instances, accepted the aid of such persons, and produced them as witnesses on the trials of such suit or action by the said George W. Bowen fourthly above mentioned, and that there are many more of such vicious persons so ready to become witnesses under the control of the said George W. Bowen and his said confederates, and that owing to the antiquity of the al-
50 leged transactions and conversations falsely asserted by such persons, it is impossible to offer any direct contradiction of the testimony of any of them, and that such contradiction can, in general, be effected only by laborious and extended inquiries into his or her life, walk, and conversation, in particulars wholly irrelevant to the said issue of maternity; and that thus the falsehood of any of such witnesses, and his or her depraved character, can be developed or shown only by raising a collateral issue, which in labor, difficulty, cost, and consumption of time in court on the trial, often exceeds the entire demands, in these respects, of any ordinary contested trial.

And your orators and oratrix further say, that encouraged by the public appearance on the trials aforesaid, and the apparent toleration of their class, and the steady increasing recruits to such class on each occasion, such false witnesses are constantly growing more reckless.]

And your orators and oratrix further say, that by common repute, and your orators and oratrix believe it to be historically true, the dwelling-house or mansion and homestead aforesaid was for some time in the year one thousand seven hundred and seventy-six or seven, during the aforesaid revolutionary war, occupied as his military quarters by General George Washington, aforesaid.

And your orators and oratrix further say, that during the latter part of her life, the said Eliza B. Jumel was in the habit of exhibiting a certain bed-room in said mansion as that which the said General George Washington had used during such his occupation of such mansion.

And your orators and oratrix further say that on such second trial a witness produced by the said plaintiff testified in substance that the said Eliza B. Jumel, near the end of her life, had exhibited to him such room and the bed therein, and told him that it was George Washington Bowen's room, and that no one should ever occupy such bed therein,

until he, the said George Washington Bowen, should come and
51 do so; which witness, on his cross-examination, distinctly admitted; that on the said first trial he had sworn to such exhibition of said room to him as George Washington's room, without then giving in evidence any statement, allusion or reference by the said Eliza B. Jumel concerning the said Bowen.

[And your orators and oratrix further say, that some of the said suits or actions brought by, or in the name of the said George W. Bowen, are for property which, though of value much exceeding five hundred dollars, is yet of inconsiderable value compared with the cost of countervailing the false testimony so under the control of the said George W. Bowen and his said confederates.]

And your orators and oratrix further say, that all the right, title, and interest in any property, claim, or demand whatever, which was acquired by the aforesaid conveyance, dated the tweny-ninth day of July, in the year one thousand eight hundred and sixty-five, were had and obtained in consideration of the sum of forty thousand dollars therefor paid, [and were in fact and in the contemplation of all the parties to such conveyance, and of your orators and oratrix, acquired for the mutual use and benefit of your oratrors and oratrix, as the family by adoption of the said Stephen Jumel, and Eliza B. Jumel, deceased; and your orators and oratrix are advised and insist, that any claim by your orators and oratrix, or any of them, to recover back from the grantors in such conveyance, any part of the consideration so paid for such conveyance, on account of any facts or circumstances stated in this bill of complaint would not be conformable to equity.]

And your orators and oratrix further say, that on or about the twenty-first day of November, in the year one thousand eight hundred and seventy-two, one Charles Covert, now a citizen, resident, and inhabitant of the State of New York and of this district, was in possession of the said lands and premises seventhly and eighthly above described, [under and by virtue of a good and lawful assurance thereof to him by or through your orator, Nelson Chase. And your orators and oratrix
52 further say, that the said George W. Bowen, and his said confederates, having embarrassed the said Charles Covert, and rendered his said title unmarketable by their persistency in prosecuting such pretended claim of the said George W. Bowen, and by the notices of suits pending, filed, as aforesaid, did on or about the day and year last aforesaid, falsely, fraudulently, and corruptly take an undue advantage of said Covert's situation in that behalf, and by the means aforesaid compel him to pay to said George W. Bowen two thousand five hundred dollars, for a formal conveyance of said Bowen's pretended title to such last-mentioned lands and premises, as heir at law of said Eliza B. Jumel; thereby, for market purposes, unfettering and disembarrassing such title of him, the said Charles Covert. And your orators and oratrix are advised and insist, that inasmuch as the said Charles Covert acted in that behalf with full notice and a conviction of the invalidity of said George W. Bowen's pretended claim, he the said Covert has no remedy to recover back the said two thousand five hundred dollars so fraudulently obtained from him, but that your orators and oratrix or your orator, Nelson Chase, as trustee in their behalf, are or is entitled to recover the same with interest and costs from the said George W. Bowen, in part satisfaction of the aforesaid claims and demands against the estate and representatives of the said Eliza B. Jumel, deceased.]

Wherefore, your orators and oratrix pray, that by the order and decree of this honorable court in the premises, the aforesaid trusts declared by

the said conveyances from the said Mary Jumel Chase to the said Michael Werckmeister, and the said deed of appointment may be established, and that the aforesaid claims and demands which so as aforesaid accrued to your oratrix and your orator, William I. Chase, may be ascertained, and that the same and the extent thereof respectively, as herein-above asserted, may be adjudged, declared, and decreed, and that the said George W. Bowen may be adjudged and decreed to make good and satisfy the same, or assent to the retention by your orators and oratrix of
53 the estate real and personal which were of the said Eliza B. Jumel, at her death, toward the satisfaction and discharge of such claims and demands; and that the said George W. Bowen, his counsellors, solicitors, attorneys, and agents, and every of them, may, by the perpetual order and injunction of this court, issuing out of and under the seal thereof, be restrained from further prosecuting the suits or action at law aforementioned, or any of them, and from commencing or prosecuting any other suit or action at law against your orators and oratrix, or any of them, or the assigns, tenants, agents or servants of them, or any of them, touching or concerning any estate real or personal which was of said Eliza B. Jumel, at the time of her death, so that the vexatious litigation aforesaid may be prevented and ended, and that the said respective deeds of conveyance to and from the said Alexander Hamilton, and the said respective deeds of conveyance to and from the said Francis Phillippon, may be declared and decreed to be inoperative and void as against your orators and oratrix and each and every of them; and that the said George W. Bowen may be ordered and decreed to pay your orators and oratrix their costs of this suit, and that the said George W. Bowen, as pretended heir at law of the said Eliza B. Jumel, may be decreed to pay to your orators and oratrix, or some one of them, the said two thousand five hundred dollars, with interest, toward the satisfaction of the aforesaid claims and demands against the said Eliza B. Jumel, and her estate and representatives; and that your orators and oratrix may have such further relief or such other and such different relief in the premises, or both, as may be agreeable to equity and good conscience; to the end, therefore, that the said defendant, George W. Bowen, may, if he can, show cause why your orators and oratrix should not have the relief hereby prayed for, and may, without oath or affirmation, answer all and singular the premises, any oath or affirmation to the answer of the said defendant being hereby expressly waived.

May it please your honors to grant unto your orators and ora-
54 trix the writ of subpœna of this honorable court, issuing out of and under the seal thereof, directed to the said George W. Bowen, commanding him at a certain day, and under a certain penalty to be therein inserted, to be and appear before your honors in this honorable court, then and there to stand to, obey, abide, and perform such order and decree in the premises as to your honors shall seem meet and shall be agreeable to equity.

And your orators and oratrix will ever pray, &c.

JAMES C. CARTER,
Solicitor for Complainants.

ALBERT STICKNEY,
Of Counsel.

(Endorsed:) Circuit court of the U. S., southern dist. of New York, second circuit. In equity. Nelson Chase and others vs. George W. Bowen. Bill of complaint. Filed July 20, 1873.

55 Circuit court of the United States, southern district of New York, in the second circuit, in equity.

NELSON CHASE, ELIZA JUMEL PERY, AND PAUL R. G. Pery, her husband, and William I. Chase, plaintiffs,
vs.
GEORGE W. BOWEN, DEFENDANT.

The answer of George W. Bowen, defendant, to the bill of complaint of Nelson Chase, Eliza Jumel Pery, Paul R. G. Pery, her husband, and William I. Chase, plaintiffs.

This defendant, now and at all times saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said plaintiff's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith:

That he admits that he is a citizen of the State of Rhode Island, and that the said complainants are respectively citizens of the city and county and State of New York, as in said bill of complaint is stated and alleged.

And this defendant, further answering, saith he has been in-
56 formed, and believes it to be true, that Stephen Jumel in the said bill of complaint named was united in marriage at the said city of New York with a woman called Eliza Brown in said complaint, (but whose real name, and the one by which she was commonly called, was Eliza or Betsey Bowen, until at or about the time of her said marriage, when she assumed or otherwise, in some manner unknown to this defendant, received the name of Eliza Brown;) that she was a native of Rhode Island, of humble parentage; but this defendant has never heard, nor has he been informed, save by the said complainants' bill, whether the said Eliza, before said marriage, had always been in very humble pecuniary circumstances, and cannot set forth, as to his belief or otherwise, whether she had always been in very humble circumstances or not before said marriage.

And this defendant, upon information and belief, admits that the said Stephen Jumel lived, but not continuously, in matrimony with his said wife until his death on the twenty-second day of May, one thousand eight hundred and thirty-two, and that at the last-mentioned date he died (but whether or not he died intestate this defendant is not informed, and cannot state) without having any issue of his said marriage, or other heir at law him surviving.

And this defendant, further answering, admits that the said Eliza B. Jumel survived said Stephen Jumel, and that she died on the sixteenth day of July, in the year one thousand eight hundred and sixty-five, without leaving any valid or effectual last will or testament, but he further saith, that her age at the time of her death was ninety years or more, but how much more this defendant is ignorant and cannot state; and that in the year one thousand eight hundred and thirty-three, (but in what particular month of that year this defendant is ignorant and cannot state,) and after the death of said Stephen Jumel, she duly intermarried with one Aaron Burr, who departed this life in the month of September, in the year eighteen hundred and thirty-six, leaving her his widow.

57 And this defendant, further answering, saith that he denies, upon information and belief, that the said Stephen Jumel and his said wife, in or about the time or at the place mentioned in said bill of complaint, or at any other time or place, took and received into their dwelling-house and domesticated as one of their family, or as their child by adoption, and as their intended heiress or successor to them respectively of or in all or any such estate as they or either of them might leave at their deaths, the female child called Mary Jumel Chase, as alleged in said bill; or that she intermarried with the said Nelson Chase with their approval; or that they took said Mary under their protection and support and educated her, and consented to her marriage with said Nelson Chase; or that they invited said Chase and wife to the house of said Stephen Jumel; but he admits that they were supported at intervals and were otherwise greatly assisted by said Eliza B. Jumel without the concurrence of the said Stephen Jumel until his death.

And this defendant further says that he is informed and believes, and therefore denies, that from the marriage of said Mary and until she departed this life she continued to occupy or sustain, by the full or other acceptance, recognition, and acknowledgment of the said Stephen Jumel and his said wife during the life of said Stephen and of his wife after his death, such relation of adopted child as is stated and alleged in said complaint.

And this defendant, further answering, says that he is not informed, save by the said bill of complaint, whether the said Mary, from the time of her marriage until her death, was called Mary Jumel Chase, but he is informed and believes that she assumed or added the word "Jumel" to her name at or about the time of her marriage to the said Nelson Chase; and he further admits, upon information and belief, that at her death she left her surviving her said husband, Nelson Chase, and two children, the said Eliza Jumel Pery and the said William I. Chase, respectively born at the times alleged in said bill of complaint.

58 And this defendant, further answering, denies that in conformity with any promise made by said Eliza B. Jumel to said Mary Jumel Chase, alleged in said bill of complaint or otherwise, she, the said Eliza B. Jumel, took under or into her assumed guardianship and custody, as her descendants and grandchildren by adoption, and as her intended heirs or successors to her estate at her death, the said Eliza Jumel Pery and the said William I. Chase, or either of them, until the marriage of said Eliza Jumel Pery, or until the said William I. Chase should have attained the age of nineteen years, as is alleged in said answer; but this defendant, upon like information and belief, admits that said Eliza B. Jumel did harbor in her family, and did support, maintain, and in part educate said Eliza Jumel Pery and William I. Chase as beneficiaries merely, and not as adopted grandchildren or wards; and this defendant further denies all other allegations and statements in respect to the care, custody, education, and support of the said Eliza Jumel Pery and William I. Chase in said bill contained, except as is herein lastly above admitted and stated.

And this defendant, further answering, admits that the said Stephen Jumel in his life-time, and on and prior to the second day of June, in the year one thousand eight hundred and fifteen, was possessed and seized in fee-simple absolute of all and singular the premises, lands, tenements, hereditaments, and real estate in said bill of complaint claimed to be first, secondly, thirdly, fourthly, fifthly, and sixthly described in said bill. But whether the said premises, lands, and real estate are of the dimensions, or are well or with reasonable certainty described in said

bill or not, this defendant is ignorant and cannot state, and he therefore asks that reference be had to the various instruments conveying the same to said Stephen Jumel, to ascertain the same.

And this defendant, further answering, admits that the said Stephen Jumel had, as his homestead, a mansion or dwelling-house, barns, stables, and other surroundings, as alleged in said bill of complaint, but he denies that the said lands and premises were exclusively used
59 and occupied as in said bill of complaint is alleged; but he alleges that after his, the said Stephen Jumel's, death the said lands and premises were occupied by and were in the possession of said Eliza B. Jumel after the death of said Stephen Jumel—until her death.

This defendant, further answering, admits and says that the said Stephen Jumel, on and subsequent to the second day of June, in the year one thousand eight hundred and fifteen, was possessed of and seized in fee-simple absolute of the lands and real estate first, secondly, thirdly, fourthly, fifthly, andsixthly described in said bill, and of every part thereof, and that on or about the eleventh day of December, in the year one thousand eight hundred and twenty-seven, he, the said Stephen Jumel, by his attorney, Eliza B. Jumel, in due form of law, duly granted and conveyed the same, together with lot No. six, in said bill designated, to one Mary Jumel Bowne in fee-simple; and that afterwards, and on or about the last-named day, she, the said Mary Jumel Bowne, did, in due form of law, convey the same to said Michael Werckmeister, in said bill also named, by a certain deed good and sufficient in the law, and for the sole use and benefit of the said Eliza B. Jumel and her heirs, and with the intent and for the purpose of passing the title in fee-simple absolute to the said Eliza B. Jumel and her heirs, (as by said deed will more fully appear, reference being had thereto;) and this defendant denies each, every, and all other statements and allegations in said bill contained in reference to said conveyance by said Stephen Jumel to said Mary Jumel Bowne, or by her to said Michael Werckmeister.

This defendant, further answering, further admits that the said Eliza B. Jumel, on or about the twenty-first day of November, in the year one thousand eight hundred and twenty-eight, did execute some paper writing, in some respect similar to the paper writing in said bill of complaint mentioned, and therein called "a certain deed or instrument of appointment," but he denies that said last-mentioned deed or instrument contained the provisions or was of the force or effect in said
60 bill alleged, as will more fully appear by reference thereto; and he further alleges that said instrument ceased to be in any wise operative in any respect, after the conveyance by said Michael Werckmeister and the said Eliza B. Jumel to Francis Phillippon, as hereinafter mentioned stated; and he, this defendant, denies each and all other statements and allegations contained in said bill of complaint in reference to said deed or instrument of appointment not hereinbefore denied.

And this defendant also further denies that all parts or any part of the said lands "thirdly described" in said bill, were, at or before the making of said alleged deed of appointment, in due form of law settled legally or beneficially to the benefit of said Mary Jumel Chase, or to her heirs, in fee or otherwise, but he admits that the said Michael Werckmeister died without issue before said Eliza B. Jumel departed this life.

And this defendant, further answering, admits and says that all and singular the lands and real estate, with the appurtenances mentioned

and described in the complainants' said bill of complaint (except the said lands in the county of Saratoga, and the said lands seventhly and eightly described in said bill) were in the years 1827 and 1828, or thereabouts, duly vested in Michael Werckmeister, mentioned in said bill of complaint, in trust for the sole and exclusive use, benefit, and advantage of the said Eliza B. Jumel, and for the sole and exclusive use and benefits of her heirs at law forever, and that the said Eliza B. Jumel had, by the terms of the said trust, sole and exclusive power and authority to sell the same in fee, and to direct the said trustee to convey the same to such person or persons as should thereafter purchase the same of the said Eliza B. Jumel; and that by the terms of said trust, the said Eliza B. Jumel, the sole donee therein named, had no power, right, or authority to direct or appoint the disposition of said property after her death, and that the said paper designated by the plaintiffs in their said bill of complaint as a deed or instrument of appointment was, at the time of the execution thereof, and at all times thereafter, inoperative and void and ineffectual in law to convey any title to said lands and real estate, or any interest therein, as will more fully appear by reference to said trust-deed and said instrument of appointment, reference being thereto had.

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That the said Michal Werckmeister departed this life in or about the month of October, in the year eighteen hundred and forty-six, and thereupon the said Eliza B. Jumel, by virtue of the various statutes of the said State of New York then in force, and especially by virtue of the provisions of article two, chapter one, title two, of the revised statutes of said State, entitled, "Of uses and trusts," not only became confirmed in her aforesaid title, but she thereupon became the owner in fee of all and singular the said lands and real estate mentioned and described in said bill, (excepting therefrom as aforesaid.)

And this defendant, further answering, admits that the said Eliza B. Jumel, after the death of the said Stephen Jumel, acquired in fee-simple absolute by purchase, as alleged in said bill, the two parcels of land situate on Seventh avenue and Forty-second street, in the said city of New York, numbered seventhly and eighthly in said bill, and also the six other farms or parcels of land situate in the town of Saratoga Springs, in the county of Saratoga, and numbered eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly in said bill, (but he is not informed whether the same are correctly described in said bill or not.)

And this defendant, also further admits that the said Eliza B. Jumel died seized and possessed of all and singular the last aforesaid lands and premises.

And this defendant, further answering, saith that he never has in any way or manner whatever made or intended to make any claim whatever to any part or portion whatever of the lands and real estate alleged in said bill to have been conveyed by the said Eliza B. Jumel to Ambrose C. Kingsland and Isaac P. Martin, or to either of them, but he further saith that she, the said Eliza B. Jumel, at the time of making such conveyances, was the sole owner in fee of said lands, and had full and ample power to convey the same to said Kingsland and Martin in fee, and to assure the same to them respectively.

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And he, this defendant, denies that she fraudulently, or in violation of any trust whatever alleged in said bill, did convey, or cause to be conveyed or assured to said Kingsland, or to the said Martin, or to either of them, any of the said lands and real estate, and he denies each and

every allegation of fraud in regard to said conveyances alleged or contained in said bill, sentence by sentence, and paragraph by paragraph.

And he further alleges that at the time of making such conveyance to them, said Ambrose C. Kingsland and Isaac P. Martin respectively, all and singular the said lands and real estate conveyed to them respectively, were unembarrassed, unencumbered, and were not subject to any trust-deed or other paper-writing mentioned in the said bill of complaint, or to any other trust-deed or paper-writing whatever.

This defendant further admits, upon like information and belief, that the said Ambrose C. Kingsland and Isaac P. Martin, respectively, and their respective assigns, ever since the aforesaid conveyances to them, said Kingsland and Martin respectively, have held and possessed the said lands and real estate so as herein respectively conveyed to them, without any disturbance from the said plaintiffs, or any or either of them, or from any other person whatever; and this defendant further denies that by reason of the aforesaid conveyances, either the said Eliza B. Jumel, at her death, or her real or personal representatives, or any of them, were, or are, bound to make any such restitution as is claimed in said bill.

This defendant, further answering, saith that he has some knowledge as to the facts alleged in said bill of complaint in relation to what is alleged in said bill to be a treaty or contract of marriage, and which said contract is alleged to have been had or made in the empire of France, in the year eighteen hundred and fifty-four, between said Eliza Jumel Pery, Paul R. G. Pery, and his father, and Eliza B. Jumel;

63 and upon such knowledge as well as upon his information and belief, he denies that there was such agreement, or treaty of marriage as is alleged in said bill of complaint, or otherwise, but he admits, upon information and belief, the alleged marriage of said Paul R. G. Pery and Eliza Jumel Chase at the time alleged in said bill of complaint.

And this defendant denies that the said Eliza B. Jumel on her part did, by writing subscribed by her, represent in substance at the time alleged in said bill of complaint, or at any other time, that her estate then amounted in value to two millions of dollars; or that the same was destined at her death to be divided between the said Eliza Jumel Chase and said William I. Chase; or that she undertook or promised to the parties to the said alleged treaty or to any of them that she would destine, or that she did destine to and for the said Eliza Jumel Chase from that day in addition to one equal share or half part of such alleged estate, or that in the events in said bill alleged the aforesaid share of the said Eliza Jumel Chase should be increased; or that she, the said Eliza B. Jumel, should and would, by her last will and testament, devise, bequeath, and assure such share of such alleged estate to said Eliza Jumel Chase at and immediately after her death as is alleged in said bill of complaint; and this defendant in like manner denies all and singular the allegations and statements contained in said bill of complaint, in regard to any such pretended promise or undertaking of her, the said Eliza B. Jumel, to make any last will or testament whatever, or thereby to devote any of her property to the use or benefit of said Eliza Jumel Chase, (now Pery;) and he, this defendant, denies all other allegations in said bill of complaint contained in respect to said alleged treaty of marriage and representations and promises, not hereinbefore denied.

This defendant, further answering, says that the estate of the said Eliza B. Jumel, at the time of such alleged representations by her, was of the value of one million dollars, and he denies that she knowingly or

wilfully or with any intent to deceive, injure, or defraud the said
64 parties to said alleged treaty, or to induce them to consent to or solemnize said marriage, made any false representations whatever; and he denies that they confided or relied upon any such statement or representation of the said Eliza B. Jumel, as is alleged in said bill of complaint, or that the said Mary Jumel Chase and Paul R. G. Pery were thereby induced to marry each other, or that they were married at the special instance or request of said Eliza B. Jumel, or by her were any of the aforesaid parties to said alleged treaty by such instance and request induced to consent to such marriage or to solemnize the same as is untruly alleged in said bill of complaint.

And this defendant further denies that said Eliza Jumel Chase was happy in her said marriage; nor was she nor did she continue to be dutiful or affectionate towards the said Eliza B. Jumel, but on the contrary she was unhappy, undutiful and a source of grief and torment to the said Eliza B. Jumel shortly after such marriage until the death of the said Eliza B. Jumel.

This defendant, further answering said bill, denies the allegation and statements therein contained, as to the value of said Eliza B. Jumel's property at the time of the alleged making of said representations by her as well as at the time of her death; and also as to her not making any provision for their support or benefit, but on the contrary, as this defendant is informed and believes, the said Eliza B. Jumel did, intervening the time of said marriage and her death, by gifts and otherwise, aside from any last will and testament, make suitable and proper provision, and all that it was prudent or safe for her to make for them respectively; and this defendant further denies that the said Eliza Jumel Pery was, at the time of said Eliza B. Jumel's death, entitled to all or any of her estate in any manner whatever; nor was she by reason of anything alleged in said bill, legally or equitably, entitled to recover, or have, or receive from the real or personal representatives of the said Eliza B. Jumel the said sum of one million of dollars, or any other sum whatever, or that any such claim or demand ever accrued, or ever had any foundation whatever, in fact, in law, or in equity.

65 This defendant further denies that the said Eliza B. Jumel, at any time after the year eighteen hundred and fifty-five, exhibited any monomaniacal diminution of regard for said Eliza Jumel Pery, or antipathy to the said William I. Chase, but, on the contrary, she was greatly annoyed and oppressed in mind by their unkind, unfair, immoral, and vicious conduct, as this defendant is informed and believes to be true.

As to the paper-writing alleged to have been called the last will and testament of said Eliza B. Jumel, and set up as such by certain persons named therein as executors, this defendant says that he knows nothing of it except from hearsay; that the same was set aside by some means unknown to this defendant in full, and as he believes by the management and combinations of the plaintiffs and other persons with whom they combined and co-operated, and whose names are at present to this defendant unknown; that he, this defendant, never claimed to inherit any property under or by virtue of said last will and testament, nor does he now claim anything thereunder, but he denies that said will was set aside for the particular causes stated in said bill.

And this defendant, further answering, expressly denies that William B. Jones, Stephen Jumel Jones, Eliza Jumel Tranchell, and Louisa Jumel Maddox were the nephews and nieces of the said Eliza B. Jumel, or that any or either of them was the nephew or niece of the said Eliza

B. Jumel, or were in any way or manner, or to any extent whatever, the heirs at law of the said Eliza B. Jumel, or that either they or any one of them were, or was ever the heir at law of the said Eliza B. Jumel, nor was the said Eliza Jumel Pery, or the said William I. Chase, ever such heir at law of said Eliza B. Jumel, and he, this defendant, also denies that they, the said William B. Jones, Stephen Jumel Jones, Eliza Jumel Tranchell, and Louisa Jumel Maddox, did execute such deed, or grant or convey their alleged or pretended proportion, share, right, title, and interest to said Nelson Chase, as is alleged in said bill, but, on the contrary, there was another paper, or other papers, executed
66 by them, greatly modifying the one in that behalf mentioned in said bill, and now in possession of said Nelson Chase, as this defendant is informed and believes; and he, this defendant, denies all and singular the statements and allegations contained in said bill in relation to said alleged conveyance to said Nelson Chase.

This defendant denies that such an instrument or indenture of family settlement between said Nelson Chase, William I. Chase, and Eliza Jumel Pery (with others) was made as is alleged in said bill; and he further denies all and singular the allegations and statements contained in said bill in regard to said alleged indenture, or to the provisions, or terms, or tenor, or effect thereof; or to the property therein or thereby transfer'ed to or vested in the said Nelson Chase; and he, this defendant, insists that every instrument in writing executed between the said Nelson Chase, William I. Chase, Eliza Jumel Pery, or between the said Nelson Chase and the said William B. Jones, Stephen Jumel Jones, and the said Eliza J. Tranchell and Louisa J. Maddox mentioned or referred to in said bill, was made with the intent on their part to defraud this defendant out of his just rights as the son and heir at law of said Eliza B. Jumel, and that each and every one of said instruments is void as against this defendant.

This defendant further denies the allegations and statement in said bill contained that the said Eliza B. Jumel was not, in equity or otherwise, or at law, for her own use or benefit, seized or otherwise entitled unto any lands, tenements, hereditaments or real estate or effects, which could pass by descent or inheritance, or otherwise by act or operation of law, to any heir or heirs of her, the said Eliza B. Jumel, deceased, but, on the contrary, she died seized, in fee-simple, in her own right in and to all the land and real estate described in said bill of complaint or therein mentioned, (except the land and real estate conveyed by her to said Ambrose C. Kingsland and Isaac P. Martin, respectively,) all of which land, except as lastly aforesaid, could be charged for any debt, liability, or for any legal claim or demand against her or her estate.
67 This defendant, further answering, admits the instituting and commencing of the alleged suit or action by the said Nelson Chase, Eliza Jumel Pery, William I. Chase, the said Stephen Jones, William B. Jones, Eliza J. Tranchell, and Louisa Jumel Maddox, as alleged tenants in common, against John Howard Smith and others, the alleged executors of and legatees under said will, but this defendant saith that he was not in any way or manner made a party to said suit or action, or to any proceeding had or taken, or to any judgment rendered therein—that of the particular proceedings had in said suit he, this defendant, has no knowledge apart from the judgment-roll therein on file with the clerk of the city and county of New York; and that he is informed and believes that in said suit or action the said last will and testament was set aside.

And this defendant also admits, upon information and belief, that let-

ters of administration were issued by the surrogate of the county of New York, as alleged in said bill, to William C. Wetmore and William B. Jones as administrators, but this defendant denies each and every and all allegations and statements contained in said bill, regarding the acts of said administrators, either in the payment of debts against the estate of the said Eliza B. Jumel or otherwise.

This defendant, further answering, denies all and singular the statements and allegations contained in said bill (beginning on line four of folio 87 of said bill, to and including line five of folio 91 of said bill) or alleged to have been made, sentence by sentence, and paragraph by paragraph. [This is the part within brackets, ante, page 22 and page 23.]

This defendant, further answering, admits and says, that on or about the twentieth day of August, in the year eighteen hundred and forty-two, the said Eliza B. Jumel and the said Michael Werckmeister duly executed to Francis Philippon, named in said bill, a certain deed for the consideration therein mentioned, conveying all and singular the lands and real estate mentioned in said bill, (except the said lands pur-
68 chased by the said Eliza B. Jumel after the death of said Stephen Jumel,) by which last-mentioned instrument the said Francis Philippon became and was the owner in fee of all and singular said lands and real estate, (except as last aforesaid,) and that after the due executing and delivery of said deed to said Philippon, he, the said Philippon, duly executed and delivered, in due form of law, and for a valuable consideration duly paid, as in said deed is expressed, to said Eliza B. Jumel, his, said Phillippon's, certain instrument in writing, commonly called a deed, whereby he duly conveyed to the said Eliza B. Jumel, in fee-simple absolute, all and singular the said lands and real estate so as aforesaid conveyed to him by said Eliza B. Jumel and Michael Werckmeister, and that she thereupon further became, by such last-mentioned conveyance to her, the sole owner in fee-simple of said last-mentioned lands and real estate, (as by reference to said deeds will more fully appear,) and that both the said Werckmeister and the said Eliza B. Jumel had full and ample power and authority in the law to make said conveyance to said Philippon, and the same is in force, and that by the aforesaid death of said Michael Werckmeister, and by the aforesaid statutes, the said title of the said Eliza B. Jumel, in the fee-simple absolute, became and was further confirmed and became absolute; and this defendant denies each and every allegation and statement in said bill contained, in reference to said last two above-mentioned conveyances, otherwise than as is herein above stated and alleged; and especially does he deny all and singular that part of said bill contained in folios 114, 115, 116, and 117 thereof, sentence by sentence, and paragraph by paragraph. [This is the part within brackets, ante, page 29 and page 30.]

This defendant, further answering, admits and says that the said Eliza B. Jumel, being the owner in fee of the lands and real estate thirdly described in said bill, at or about the time mentioned in said bill, in connection with said Michael Werckmeister, did duly execute and deliver to said Alexander Hamilton (as purchaser for the consideration therein mentioned) a certain deed, recorded as in said bill of com-
69 plaint is stated, and that he, the said Alexander Hamilton, did duly execute and deliver to said Eliza B. Jumel his, the said Alexander Hamilton's, deed; which is also recorded as in said bill is also stated; and to both of which said deeds, recorded as aforesaid, this defendant prays leave to refer for greater certainty, both of which said deeds are valid in the law, as this defendant is advised and believes. And

this defendant further denies that the said Alexander Hamilton made any such discovery as is alleged in said bill to have been made by him, or ascertained that said Michael Werckmeister and Eliza B. Jumel had not good right, power, or authority to make their said deed or conveyance to him, or that he made the requirement in said bill alleged; or that the said Eliza B. Jumel and Michael Werckmeister, or either of them, refunded to said Alexander Hamilton the consideration-money as alleged in said bill, or that he, the said Hamilton, executed any other instrument than is herein above stated; and this defendant hereby denies each, every, and all other allegations of fraud, or want of power alleged in said bill, relating to said two last-mentioned conveyances, or either of them, and he further denies that the said two last-mentioned instruments were or are fraudulent or void as against the said plaintiffs, or as against any or either of them, at law or in equity, or that the title or interest vested in said Eliza B. Jumel by said or any other deeds, and passed by descent from her to this defendant, was or is held by this defendant in trust, for the sole use or benefit of the said plaintiff, or of any or either of them, or that any obligation exists, either in law or equity, to convey or assign the same to the said Nelson Chase, under the said alleged family settlement or *or* otherwise.

As to the pecuniary condition or property of the said Eliza B. Jumel, at or before her said marriage with the said Stephen Jumel, this defendant has no further knowledge or information than he has already above stated in this his answer, but he denies each, every, and all allegations and statements in said bill contained, relative to her intercourse with any relative by blood of her, the said Eliza B. Jumel; and he, this
70 defendant, further denies that Maria Jones, deceased, named in said bill, was her, the said Eliza B. Jumel's, sister, or that she, or any of her children or descendants, sustained any relationship to her, the said Eliza B. Jumel; nor did the spouses, or any of the spouses of said alleged children or descendants sustain any such relation; and this defendant, upon information and belief, further says that during his extreme infancy, and for some years after his birth, (but for how many years he is not informed,) the said Eliza B. Jumel did recognize and acknowledge him as her child, born of her body, and, in addition to evincing a maternal solicitude for him, contributed to his support and care.

This defendant further denies all and singular the allegations and statements in said bill contained, to the purport or effect that untrue suggestions and reports were made or circulated concerning the amount or value of the estate left by said Eliza B. Jumel at her death, or that it was difficult to discover what person or persons, if any, were entitled to take lands from her by descent, but, on the contrary, he says that said Nelson Chase, before the death of said Eliza B. Jumel, was informed, and well knew, and at all times since her death has known, that this defendant was and is the son and sole heir at law of the said Eliza B. Jumel, and was at the time of her death, and ever since has been such, her child and heir as aforesaid, and entitled to take lands from her by inheritance.

Upon information and belief this defendant admits that some very few persons, but not many persons, did claim to be heirs of said Eliza B. Jumel, who were not heirs entitled to inherit her estate, but whether they mistakenly or fraudulently asserted such claim, this defendant is wholly ignorant, but this defendant denies each, every and all other allegations and statements in said complaint contained, relative to such claims, or that sundry of such claims have been silenced by verdict and judgment at law

against the claimants, or at the cost and expense of the said Nelson Chase, as alleged in said bill, or that such claims have generally or exclu-
71 sively been prosecuted by speculators therein, under contracts made as alleged in said complaint; but this defendant further says and insists that the said plaintiffs are not, nor is any one of them, in possession of the lands and real estate which was the property of said Eliza B. Jumel, at the time of her decease, as heirs at law or otherwise lawfully, but whichever of them is in possession, is a trespasser or other wrongdoer, and wrongfully withholds the possession of the same from this defendant as the owner thereof in fee.

And this defendant, further answering, says that he does set up claim and insists that he is the son of said Eliza B. Jumel, and the only child to which she ever gave birth, as far as he is informed and believes, and is her sole heir at law, exclusive of any and all other persons whomsoever, and is alone entitled to take by descent any and all lands and real estate situate and being in the State of New York, of which she may have died seized.

And this defendant further states, upon information and belief, that he was born in Providence, in the State of Rhode Island, on the ninth day of October, in the year seventeen hundred and ninety-four, in the house of one Reuben Ballou; that he was born of the body of said Eliza B. Jumel, then known and called Eliza or Betsey Bowen, a poor girl or woman; that his father is unknown to him, but that said Reuben Ballou, in this defendant's early years, called him by endearing names; that he did not know for several years after his birth that said Eliza B Jumel was his mother; that for what he considered valid reasons, and owing to circumstances which surrounded him, he kept his birth and his knowledge of his parentage from his family, after he ascertained and became informed of the fact that he was the son of said Eliza B. Jumel; that he saw her in Saratoga under peculiar circumstances, and he admits that he did not wish his wife or family to know his origin, and he denies all other allegations in said complaint inconsistent with what is herein alleged, relative to his birth, parentage, and intercourse with his said mother.

This defendant, further answering, saith that he denies each
72 and every statement and allegations in said bill contained between the word "Jumel," on line one of folio one hundred and thirty-seven, (137,) of said bill, and the word "but," on line ten, of folio one hundred and fifty-four, (154,) of said bill, [this is the part within brackets, ante, page 34 and page 149,] and states the fact to be in respect to all such allegations and statements as far as this defendant has any knowledge, information, or belief; that this defendant, believing himself to be the son of said Eliza B. Jumel as aforesaid, and her sole and only heir at law, and the owner in fee of all and singular the land and real estate of which she died seized as aforesaid, duly employed and retained Messrs. Edmunds & Fields, some time in the year eighteen hundred and sixty-seven, to take the necessary steps and prosecute the necessary suits or actions at law or in equity, as they might deem necessary and advisable to obtain the possession of said lands for this defendant, paid them the sum of five hundred dollars, and (being unable to assert and maintain his rights against said Nelson Chase, his aiders, abettors, backers, and co-workers, who were in possession of said estate and of the income and profits thereof) he, this defendant, further agreed to pay them, or that they should have for their services and expenses a certain portion (which was one-third, as this defendant now recollects) of what they should thereafter recover of his said estate, besides incurring the expense

of procuring the attendance or testimony of such witnesses as were in the State of Rhode Island, and that they, in pursuance of such agreement, commenced the several suits and actions in said last-mentioned part of said bill of complaint mentioned.

That this defendant left it entirely to the determination of said Edmunds and Fields what suits to bring, against whom, and in what courts to bring them, how to conduct them, when commenced, and in all things did he endeavor to follow their advice and direction.

How much or how often the said Nelson Chase attended court, or what he or his counsel did in court or elsewhere, or what his, this defendant's, said attorneys did, or omitted to do, this defendant cannot state
73 with certainty, but he is informed and believes that said causes were dismissed for want of prosecution, all which occurred without any notice to this defendant personally from his said attorneys until after such dismissals, and without fault on his part, and that his said attorneys commenced an action in his name and that of said Ann Eliza Vandervoort, in the court of common pleas for the city and county of New York, (they, the said attorneys, acting upon their own judgment in so doing,) against the said Nelson Chase, who then claimed to be in possession of all and singular the lands and real estate mentioned and described in the said complaint or declaration in said last-mentioned action, and also in said bill first, secondly, thirdly, fourthly, seventhly, and eighthly described, and that said action was brought by said Edmunds & Fields under and in pursuance of said original agreement, which, by the laws of the State of New York, was a legal and valid agreement, and was not, nor is the same, corrupt or champertous as in said bill is alleged, nor was there any agreement whatever between this defendant and the said Ann Eliza Vandervoort in relation to her giving or procuring any evidence whatever, and he is informed and believes that the said Ann Eliza Vandervoort was made a party plaintiff by some mistake for which this defendant cannot account.

This defendant did not know that she was made or was to be made a party plaintiff in said suit or action until after the same was commenced; and he further saith, that before the removal of said last-mentioned suit or action into this court, the process and pleadings in said suit or action were duly and properly amended according to the practice of said court, (amongst other things,) by striking out the name of said Ann Eliza Vandervoort as a party plaintiff in said suit or action, while the same was pending in said court of common pleas, and after his present attorney of record had been duly substituted in said suit or action in said last-mentioned court.

And this defendant, further answering, saith, that as to the re-
74 moval of said last-mentioned cause from said last-mentioned court to this court, he did not pretend merely that he had reason to believe that he could not obtain justice in said court, but he did believe, from facts and circumstances that came to his knowledge, as well as from information received by him, and which he verily believed to be true, that he could not obtain justice in said court of common pleas at that time, and, therefore, under certain statutes of the United States, then in force, authorizing the removal of causes from State courts to the circuit court of the United States, duly removed or caused said action or cause to be removed from said last-mentioned court to this court, and that he, this defendant, did comply with and performed every requisite act and thing necessary and required to effect such removal, (as will more fully appear from the papers connected therewith, and duly filed with the clerk of this court,) and the same is now duly pending in

said court, and that, after such removals of said cause or action, a trial thereof was had, in which the jury failed to agree, as alleged in said bill.

This defendant also admits, that said last-mentioned suit or action was brought to trial, and that the jury therein did not agree, as alleged in said bill.

This defendant, further answering, admits and says that he also commenced the several suits or actions (and no other) mentioned in said bills against the said Nelson Chase and John Coleman, and also against the said Nelson Chase and Jacob Gleason, and also against the said Nelson Chase and John Penfield, to recover the lands and real estate in that behalf mentioned in said bill, and that the venue was originally laid in the county of Saratoga, where said land and real estate are situate; that the same were respectively defended by said Nelson Chase as the real defendant in interest thererein; that the venue or place of trial in said suits or actions was, on the application of said Nelson Chase, changed to the city and county of New York, (and for the reasons hereinbefore stated with regard to the removal of said suit or action from the said court of common pleas to this court, and not otherwise;)
75 that after such change of venue, they were respectively and duly removed (before any notice of trial was served by either or any party thereto) into this court, in pursuance of the laws of the United States made and provided and then in full force, for the removal of causes from the State courts into the circuit courts of the United States, and not otherwise, (as will more fully appear by the various papers filed therein with the clerk of this court,) and that said suits are pending and undetermined in this court, and have not, nor has any one of them ever been tried, but this defendant denies that the said suits or any one of them were or was vexatiously brought, but were brought by this defendant in good faith, and for the sole purpose of recovering the possession of his own lands and real estate; and he, this defendant, denies each, every and all other allegations and statements and imputations as to his motives and conduct and action with regard to the bringing, prosecuting or removal of said three last-mentioned suits or actions in said bill contained, stated or charged, except as in this paragraph is already stated or admitted.

This defendant, further answering, denies each and every and all the statements and allegations contained in said bill, between line twelve, of folio 168 of said bill, and line eleven of folio 175 thereof. [This is the part within brackets, ante, page 41 and page 43,] except that this defendant admits that he has kept on foot, in respect of each of the said now pending suits and actions in the name of this defendant, notice of suit pending in the form, and filed as required by the laws of the State of New York, and in respect to such statements and allegations (contained as last aforesaid;) he further saith that the same are untruly made; that this defendant, being unable to contend against said Nelson Chase, and the persons hereinbefore mentioned or referred to, as associated with him in resisting this defendant's aforesaid just claims, he, this defendant, is compelled to exercise his privilege of making great pecuniary sacrifices in order to raise the money necessary to employ counsel and defray the absolutely necessary and heavy expenses of
76 prosecuting his said suits or actions caused by the illegal and unconscionable conduct of said Nelson Chase, and his associates, in defending the same.

This defendant further denies each, every, and all champertous agreements, arrangements, and practices alleged against him and all other persons assisting him in the prosecution of his said suits or actions;

and he further says and alleges that no person assisting this defendant in said prosecution of his said suits, or connected with him therein, is ready to commit perjury or to swear falsely in favor of this defendant, to his knowledge, information or belief.

This defendant, further answering, denies that the only material issue which has been raised, or which is capable of being legally raised, in said suits is, whether this defendant is the son born of the body of Eliza B. Jumel; but, on the contrary, this defendant says that, on said two former trials in this court, in said bill mentioned, the said Nelson Chase introduced in evidence, all the aforesaid deeds of conveyance and appointment, and trust-deeds and papers to establish the alleged marriage-contract or treaty of marriage in said bill mentioned or referred to, and entered fully by evidence upon his defences to said suit, upon all and singular the matters and things contained in his said bill, and had the full benefit and advantage of all the statements and allegations contained in said bill, and of all of said papers, and of all the evidence offered by him in that behalf, and had all the benefit and advantage in the law or otherwise, by way of defence to said suit, that he or any of the plaintiffs can reasonably have in this suit.

This defendant, further answering, admits that the Joseph Perry, in said bill named, did substantially testify (among other things) as stated in said bill, but he, this defendant, denies each and every allegation and statement, and all charges in said bill contained, to the effect, that this defendant fully or expressly confirmed or verified the aforesaid statements of said Joseph Perry, as to his and this defendant's intimacy in youth in Providence; and this defendant further saith, in
77 respect to said Perry's testimony, that when he, this defendant, gave his evidence on said first trial, he believed said Perry's testimony to be true; that it never entered the mind of this defendant to believe that said Perry could be so lost to all sense of veracity, or so dangerously audacious and reckless as to testify falsely to what he did testify, and it was not until after this defendant had rested his case and until after the said Nelson Chase had produced, as though by concert, a cloud of witnesses, (and amongst them some of said Perry's own relatives,) who testified as to the place of his said Perry's birth and his residence, and until after as full and thorough an investigation had been made concerning said Perry's antecedents (as could then be made under the circumstances) that this defendant became impressed with the belief that said Perry, in giving his said testimony, had sworn falsely.

This defendant further saith that the said Perry, on the morning previous to his said examination in Providence, accosted him, this defendant, in the street with the utmost familiarity, called this defendant by name, but this defendant did not at first recognize him, and so informed said Perry; whereupon he chided this defendant for not remembering the boy "Joe," who had been his playmate in boyhood, showed great familiarity with certain persons and places and incidents, with which this defendant and an associate of his early childhood, then called by the usual short name of "Joe," were both familiar, and so naturally and positively conducted himself and brought up the childhood recollections of this defendant that this defendant then, on that morning, became convinced that he was his early playmate "Joe," and from that time until the said late period of said first trial this defendant had not the slightest doubt of the substantial truth of his said testimony, and of said Perry's honesty in giving his said testimony; and when this defendant was examined, as aforesaid, (although he stated at that time, as he now recollects, that at

first he did not recollect him,) yet this defendant then fully believed that said Perry was the said playmate of this defendant, and
78 this defendant at that time would not have testified to the best of his then knowledge and belief, had he ignored his early boyhood acquaintance with said Perry; that some months prior to the said examination of said Perry this defendant had been examined as a witness in said cause before a commissioner in Providence aforesaid, and his deposition, containing the biography of his early life to a great extent, had been filed with the clerk of this court, and said Nelson Chase's counsel, who attended said examination, reduced this defendant's examination to writing for their own use.

This defendant further saith that from information derived since said trial, from the statements repeatedly made to him, and from sworn testimony that he has heard read, and from various circumstances leading to a formation of an opinion, he believes, and therefore so alleges the fact to be, that the said Nelson Chase and some person or persons acting in his behalf procured, or caused to be procured, and foisted the said Perry upon this defendant to testify as he did for the purpose of injuring this defendant's said causes.

As to the testimony of said Ann Eliza Vandervoort, alleged to have been given by her on said trial, this defendant does not remember and cannot state the same, although he was present, as he believes, during much, if not all, of her examination on that trial, and he therefore denies that her evidence is correctly stated in said bill, and he leaves the said plaintiffs to prove the same as they shall be advised is necessary or material, but this defendant has a recollection of her saying something on that trial about some people in Providence jokingly calling him the son of General George Washington. What her precise language was in that respect this defendant cannot state.

This defendant, further answering, denies that it is or has been proved or conceded by all or any parties throughout said controversies that she, the said Eliza B. Jumel, could not have been either more or less than eight years of age when the said revolutionary war terminated.

79 This defendant, further answering, denies each, every and all allegations, statements and charges of fraud, falsehood or wickedness in the perpetration of testimony by or for this defendant contained or intimated in said bill, and also all sinister designs therein contained, between line three of folio 185 of said bill, and line twelve of folio 186 thereof, or therein intended between said lines. [This is the part within brackets ante, page 45,] and he alleges that all and singular the said statements and allegations and charges contained as aforesaid are groundless.

This defendant, further answering, denies each, every and all the statements, allegations and conclusions, whether of fact or of, law, contained in said bill, between and including line twelve of folio 186 of said bill, and line nine of folio 189, to and including the word "respectivelly," on said last mentioned line. [This is the part within brackets, ante, page 45 and page 46.]

This defendant, further answering, admits and says that all his property is situate in the States of Rhode Island and New York, according to his present knowledge thereof, but he further saith that his claim to said property of said Eliza B. Jumel is not a "pretended claim," as alleged in said bill, but is a real claim. He further says that he is and for many long and weary years has been, engaged in the activities and occupation of attending to and overseeing and managing and endeavoring to improve his property, and that he is compelled to come and does

come within the State of New York quite often for the purpose of attending to his now pending suits and to recruit his health and visit his relatives at Saratoga Springs, but for no other purpose does he visit said State.

This defendant, further answering, denies each and every allegation and statement contained in said bill between line ten of folio 190 and line six of folio 195 thereof. [This is the part within brackets, ante, page 46 and page 47,] and as to such statements and allegations contained as last aforesaid, he says and alleges that he claims to be
80 the owner in fee of said lands and real estate, both at law and in equity, as against the said plaintiffs respectively, and that he does not recognize in them, or in any or either of them, any legal or equitable title or beneficial ownership thereto, or to any part thereof. That all the delay, vexation, cost, labor and embar'assment mentioned or referred to or intended so to be in said last-mentioned part of said bill, is occasioned, caused and perpetuated by said Nelson Chase and his confederates in unjustly resisting the just, legal and equitable claims of this defendant to the possession of his said lands and real estate; and that, while this defendant must necessarily make great sacrifices of time and property in his struggle to obtain his just rights, and must continue so to do until said Nelson Chase and his said confederates shall cease to resist his, this defendant's, aforesaid just claims; therefore, and for that reason alone, this defendant always has been and still is ready and willing to sacrifice very much of his said just claims for the quiet and peaceable possession of the residue thereof.

This defendant admits that the suit or action at law of this defendant fourthly above mentioned was brought to trial in this court for the second time on the ninth day of December, in the year eighteen hundred and seventy-two, and that said trial, at the filing of said bill of complaint, was still pending, the issue therein not having been passed upon as alleged in said bill of complaint.

This defendant, further answering, denies each and every allegation, statement and charge contained in said bill between line two of folio 196 and line ten of folio 199, as written in said bill, to the word "and" on said last-mentioned line, [This is the part within brackets, ante, page 47 and page 48;] and in respect to said last-mentioned allegations, statements and charges, this defendant further says that he is not, to his knowledge, information or belief associated with, nor has he in any way or manner whatever accepted the aid or service or assistance of any such persons as are therein mentioned, (with the exception of said Perry,) whom this defendant claims and insists was imposed upon
81 him by said Nelson Chase and his associates, and this defendant believes and says that all persons aiding and assisting him, and all witnesses that he has produced, (except said Perry,) are persons of honesty, integrity, and are truthful, but are subject to the ordinary frailties of our common human nature; and as to the alleged costs of contradicting witnesses on collateral issues, as alleged in said part of said bill hereby answered, this defendant says that he is informed and believes that said Nelson Chase has spent large and almost fabulous sums (the proceeds of said estate claimed by this defendant, and justly belonging to this defendant as the heir at law of said Eliza B. Jumel, besides other large sums furnished, advanced, paid, laid out and expended by his aforesaid confederates, as well as other moneys belonging to the mayor, alderman, and commonalty of the city of New York, the whole amounting to some four hundred thousand dollars or thereabouts) in endeavoring to contradict most respectable and credible witnesses pro-

duced by this defendant on said two trials, and in procuring false testimony, as well as in suppressing depositions of witnesses and other important evidence, which depositions and evidence, if produced, would greatly tend to establish this defendant's aforesaid just claims, and to defeat the unjust and false claims and pretences of the said Nelson Chase in the aforesaid pending actions or suits, and all the claims and pretences of the said plaintiffs in this suit.

This defendant admits that, on the said second trial, a witness produced on the part of this defendant testified to the fact of said Eliza B. Jumel showing a room in her said "mansion," and that she, on that occasion, stated to him substantially concerning the non-occupancy and occupancy of a certain room therein, as is alleged in said bill, and that, on his cross-examination, the said witness did say that he had not testified to those matters on the former trial; and this defendant further saith that he was not examined as to those matters on the said former trial, and he stated the above conversation candidly and truly, as this defendant believes, but against the previous ruling of the court,
82 of which the witness was ignorant, and this defendant believes that his counsel did suggest at once, that evidence of that character having been excluded by the court, he did not ask to have it taken down as evidence, and the same was not so taken.

This defendant, further answering, saith that he denies all and singular the allegations and statements contained in said bill between line eight of folio 202 and line seven of folio 203. [This is the part within brackets, ante, page 49 and page .] And in addition to such denial, this defendant further saith that the said lands and real estate situate in the county of Saratoga is of the value of one hundred thousand dollars or upwards, and that the title to the same respectively depends upon the state of facts to be established in each and every of said three causes of action mentioned in said bill against the said Nelson Chase, and Coleman, Gleason & Penfield, and that one trial will be sufficient to try the title of this defendant to said lands and real estate if the said Chase will consent to the same, instead of having three trials of said title.

And this defendant, further answering, says that he has no knowledge or information as to the costs of the right, title, and interest, claim, or demands, pretended to be acquired by the alleged conveyance, dated the twenty-ninth day of July, in the year eighteen hundred and sixty-five, except as he is informed by said bill, but he, this defendant, further says and insists that the said Nelson Chase did not acquire any right, title, or interest whatever by said alleged conveyance, (whatever sum he may have paid therefor,) and he further denies all and singular the statements and allegations further contained in said bill between the word "paid," on line four of folio 204 of said bill, and the word "and," on line eight (as the same is written) of folio 205 of said bill. [This is the part within brackets, ante, page 49.]

This defendant, further answering said bill, denies each, every, and all the allegations and statements contained in said bill between the word "described," on line four of folio 206 of said bill, and to and including the word deceased, on line eight of folio 209, [this is the part
83 within brackets, ante, pags 49 and page 50,] sentence by sentence, and paragraph by paragraph, except that this defendant further alleges and insists that said parcels of land seventhly and eighthly described in said bill were embraced in the complaint or declaration in said action or suit so as aforesaid commenced in the name of this defendant and said Ann Eliza Vandervoort against the said Nel-

son Chase, in said court of common pleas, and that in his answer to the complaint in said action or suit, which answer was duly verified by the oath of the said Nelson Chase, he, the said Nelson Chase, admitted and alleged that he was in the possession of said last-mentioned seventhly and eighthly described lands and real estate, but that on said first trial in this court, this defendant, by the examination of said Nelson Chase as a witness for the first time, was informed of the fact that he, said Nelson Chase, had previously and fraudulently conveyed said lands and real estate to said Covert for the sum of twenty-four thousand dollars, (which was several thousand dollars less than the value of the same,) and that he, the said Nelson Chase, would be altogether insolvent in case he were defeated in his claims and pretentions to said estate by this defendant, and thereupon this defendant on said trial, by his attorney, offered and asked permission to strike out said two last mentioned and described pieces of land and real estate from the complaint or declaration in said action, which offer and request was then objected to by the counsel for said Chase, and denied by the court, and afterwards, and in or about the said twenty-first day of November, in the year eighteen hundred and seventy-two, this defendant and his wife did duly quit-claim all and singular their interest in said two parcels of land and real estate to said Covert for the almost nominal consideration of twenty-five hundred dollars; the said Covert alleging and insisting that he had in good faith, and in entire ignorance of the said plaintiffs' title or claim thereto, purchased the same of said Nelson Chase, and pressing this defendant and his said wife to execute said quit-claims for the price or sum last aforesaid.

84 And this defendant humbly submits that the said trusts alleged in said bill to have been declared by the said or any other alleged conveyance from said Mary Jumel Bowne to the said Michael Werckmeister, and the said alleged deed of appointment ought not to be established, nor any alleged interest of the said plaintiffs, Mary Jumel Pery and William I. Chase, or either of them to be in anywise ascertained or declared or decreed by this honorable court; nor ought this defendant to be adjudged or decreed to make good or satisfy any of said alleged claims, or to assent to the retention by the said plaintiffs, or by any of them, of any of the estate, real or personal, which were of the said Eliza B. Jumel at her death, towards the satisfaction or discharge of any such alleged claims or demands; nor ought he, this defendant, to be in any manner restrained by any order or injunction as in said bill is prayed, or otherwise, from prosecuting his aforesaid suits or actions at law, or from commencing or prosecuting any other action at law, concerning his said estate, as prayed for in said bill, or otherwise; nor ought the said alleged respective conveyances to and from said Francis Philippon to be declared or decreed inoperative or void as against the said plaintiffs, or any or either of them; nor ought this defendant to be ordered or decreed to pay to the plaintiffs, or to any or to either of them, the said two thousand and five hundred dollars, with interest, or any part thereof, or to pay to the said plaintiffs any costs of this suit; nor ought the said plaintiffs to have any other the relief whatever prayed for in or by their said bill.

And he, this defendant, denies all combinations and confederacy charged against him in said bill of complaint; without that, that any other matter or thing in the said bill of complaint contained, and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true, to his knowledge or belief. All which matters and things this defendant is ready to aver, prove, and

maintain, as this honorable court shall direct, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

CHAUNCEY SHAFFER,
Solicitor for Defendant.

L. S. CHATFIELD,
Of Counsel.

85 Circuit court of the United States, southern district of New York, in the second circuit, in equity.

NELSON CHASE, ELIZA JUMEL PERY, AND Paul R. G. Pery, her husband, and William I. Chase, complainants,
vs.
GEORGE W. BOWEN, DEFENDANT.

The replication of the above-named complainants unto the answer of the above-named defendant.

These repliants, saving and reserving unto themselves all and all manner of advantage to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true.

86 All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by their said bill they have already prayed.

JAMES C. CARTER,
Solicitor for Complainants.

(Endorsed:) U. S. circuit court. Nelson Chase et als. vs. George W. Bowen. Replication. Filed May 21, 1873.

87 Circuit court of the United States for the southern district of New York, in equity.

NELSON CHASE AND OTHERS, COMPLAINANTS,
vs.
GEORGE W. BOWEN, DEFENDANT.

On reading and filing the stipulation of the attorneys for the respective parties to this action, and on motion of Mr. Chatfield, of counsel for the defendant, it is ordered that the defendant have leave to file a supplemental or amended answer herein setting up such additional matter as he may be advised, such supplemental or amended answer to be filed within four days from this date, and the date of issue to remain of its present date, and to be shown to the complainants' solicitor on or before Saturday next, to the end that the complainants may make any amendments to his bill of complaint which may be made necessary by

88 the amended or supplemental answer, any such amendment to the bill to be served on the defendant on or before Monday next.

(Signed) SAML. BLATCHFORD.

I consent to the entry of this order.
Dated April 21st, 1874.

JAMES C. CARTER,
Solr. for Complainant.

(Endorsed:) U. S. circuit court. Nelson Chase et al. vs. George W. Bowen. Stipulation and order to file supplemental answer. C. Shaffer, solr. for deft. Filed April 21, 1874.

89, 90 Circuit court of the United States, southern district of New York, in equity.

NELSON CHASE, ELIZA JUMEL PERY, AND Paul R. G. Pery, her husband, and William I. Chase, complainants,
vs.
GEORGE W. BOWEN, DEFENDANT.

The supplemental answer of George W. Bowen, defendant, to the bill of complaint of Nelson Chase, Eliza Jumel Pery, Paul R. G. Pery, her husband, and William I. Chase, complainants.

This defendant, further answering the original bill herein, by way of supplement, (leave of the court having first been obtained thereof,) and not waiving or abandoning any of the allegations, statements, matters, and things, in his original answer to the original bill of complaint herein contained, but insisting upon the truth thereof, alleges, states, and says, that after the due filing of the said original bill herein, the said jury empanelled on the said second trial of the cause on the common-law side of
91 this court, (wherein this defendant was plaintiff & the said Nelson Chase was defendant, and which cause and the said second trial thereof is mentioned in said bill of complaint,) on or about the twentieth day of March, in the year 1873, rendered their verdict in favor of the said Nelson Chase on the issue and question whether or not he, this defendant, was the son of said Eliza B. Jumel, and found that he, this defendant, was not such issue, and by the direction of the court, based upon the conveyances put in evidence by the respective parties and the deed of appointment put in evidence by the defendant in that action, and being the same papers mentioned and set forth in the said bill of complaint herein, they further rendered their additional verdict, by which they then found specially that the said Eliza B. Jumel at the time of her said death had no estate or interest in the lands claimed by this defendant in said suit which was descendable to her heirs, to which said direction of the said court, and the finding of said additional verdict, the said plaintiffs' counsel then and there duly excepted.

92 That on or about the second day of October, in the year last aforesaid, the said Nelson Chase duly perfected his judgment in said last-mentioned cause against this defendant, as plaintiff therein, for his costs in said last-mentioned cause, and that afterwards, and on or about the eighth day of October aforesaid, this defendant duly sued out a writ of error from the Supreme Court of the United States (which was duly allowed and issued) in behalf of this defendant as plaintiff in error against the said Nelson Chase as defendant in error, and the said judgment-record, bill of exceptions, and all other proceedings in said last-mentioned cause were by said writ duly removed to the said Supreme Court, in which last-mentioned court the said cause on said writ of error is now pending and undetermined, and that said cause is duly docketed for argument and hearing in said last-mentioned court on the record, bill of exceptions, and all other proceedings therein, and that due and proper security was given to make said writ operate as and the same as

a supersedeas or stay of proceedings on said judgment, and all proceedings on the part of the said Nelson Chase thereon are duly stayed.

93 All which matters and things contained in this supplemental answer, as well as in the original answer herein, this defendant is ready to aver, prove, and maintain as this honorable court shall direct; he further prays (as in and by his said original answer he has already prayed) to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

CHAUNCEY SHAFFER,
Solicitor for Defendant.

L. S. CHATFIELD,
Of Counsel.

(Endorsed:) United States circuit court, southern district of New York, in equity. Nelson Chase et al. vs. George W. Bowen. Supplemental answer. C. Shaffer, solr. for deft. Filed Apl. 25, 1874.

94 Circuit court of the United States, southern district of New York in equity.

NELSON CHASE, ELIZA JUMEL PERY, PAUL R. G. Pery, her husband, & William I. Chase, complainants,
vs.
GEORGE W. BOWEN, DEFENDANT.

The replication to the above-named complainants unto the supplemental answer of the above-named defendant.

These repliants, saving and reserving unto themselves all and all manner of advantage to the manifest insufficiencies of the said answer, for replication thereunto, say that they will aver and prove their said bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said supplemental answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these

95 repliants, without this, that any other matter or thing whatsoever in the said supplemental answer contained material or effectual in the law to be replied unto, confessed, or avoided, traversed or denied, is true.

All of which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their bill of complaint they have already prayed.

JAMES C. CARTER,
Solicitor for Complainants.

(Endorsed:) U. S. circuit court, southern district of New York, in equity. Nelson Chase et al. vs. George W. Bowen. Replication to the supplemental answer. James C. Carter, solicitor for compl'ts. Filed April 25, 1874.

96 U. S. circuit court, southern dist. of New York.

NELSON CHASE ET AL.
vs.
GEORGE W. BOWEN.

This cause came on to be tried before Mr. Justice Blatchford, at a circuit court held April 27th, 1874.

For the plaintiffs appear Mr. James C. Carter and Mr. Charles O'Conor. For the defendant appear Messrs. Merritt E. Sawyer, Gideon J. Tucker, and Levi S. Chatfield.

The plaintiffs' counsel opens the case and introduces evidence as follows:

97 U. S. circuit court, southern district of New York, in equity.

NELSON CHASE ET AL.
vs.
GEORGE W. BOWEN.

It is hereby stipulated and agreed that upon the trial of this suit either party have liberty to read in evidence from the stenografer's copies of his notes the whole or any part of the testimony, exhibits, and evidence given on either of the trials of the suits of George W. Bowen vs. Nelson Chase, on the common-law side of this court, and also all depositions taken in said last-mentioned cause which would have been receivable in evidence on either trial thereof, subject to all legal objections as to competency or relevancy or admissibility thereof, or of any portion thereof, and to give, in addition, such other evidence as either party may deem necessary, and also to read in evidence, subject in like manner as aforesaid, the whole or any part of the bill of exceptions
98 settled in the said suit of Bowen vs. Chase.

JAMES C. CARTER,
Solr. for Complainant.

Dated April 21st, 1874.

The plaintiff then gave in evidence a map of the property in question, of which the following is a copy:

(Here follows map, marked page 98½.)

99 The complainant's counsel then offered in evidence all the matter contained in the bill of exceptions in action of ejectment to recover a part of the property in question, lately tried in this court, between George W. Bowen as plaintiff and Nelson Chase, defendant, from page 21 to 50, both inclusive, embracing all the deeds given in evidence at that trial on the part of the plaintiff therein, showing the title of Stephen Jumel and Mary J. Bownes, and of Werckmeister.

100 The plaintiff then read in evidence on his behalf before the said jury, a certified copy of a deed from Gerardus Post and wife, to Stephen Jumel, bearing date 3 May, 1814, and recorded in the office of the register of the city and county of New York, 10 May, 1814, in liber 106 of conveyances, page 261, conveying unto the said Stephen Jumel, in fee-simple, a portion of the premises described in the declaration, consisting of lot number six (6) on the same map, of property of Leonard Parkinson, which is mentioned in the various descriptions hereinafter set forth or mentioned as having been made by one Charles Loss, containing nine acres and two roods.

Also a certified copy of a power of attorney from Stephen Jumel to Eliza Brown Jumel, bearing date 15th May, 1826, and recorded in the office of the register of the city and county of New York, on the 1st July, 1826, in liber 2 of power of attorney, page 88, which power of attorney was in the words and figures following:

101 Know all men by these presents that I, Stephen Jumel, late of New York, but now of Paris, have made, ordained, constituted,

and appointed, and by these presents do make, ordain, constitute, and appoint, Eliza Brown Jumel, my wife, to be my true and lawful attorney generally to transact and manage my affairs at New York, or at any place or places in the State of New York, and for me and in my name, and for my use, and on my behalf to sell, either by public auction or private contract, as she shall think fit and see best, for the price or prices that can be had or gotten, and for my most benefit and advantage, all or any part of the real estate that I may have belonging to me and lying in the State of New York, and, upon sale thereof or any part thereof, to sign, seal, and execute all and every such contracts, agreements, conveyances and assurances, and to do and perform all such acts and things for effecting such sale or sales thereof, or any part thereof, and,
upon receipt of the monies arising from such sale or sales, to give
102 sufficient releases, acquittances, and discharges for the same. And I do hereby authorize and empower the said Eliza Brown Jumel to substitute and appoint one or more attorney or attornies for the purposes aforesaid, with such power or powers as to her shall seem meet and requisite, and generally to do all lawful acts and things for the better executing of the premises as fully and in every respect as I myself might or could do if I were personally present, hereby ratifying, allowing, and confirming all and whatsoever my said attorney or substitute shall in my name legally do or cause to be done in and about the premises, by virtue of these presents. Also hereby revoking, countermanding, annulling, and making void all or any former power of attorney by me heretofore granted for the purposes above mentioned.

In witness whereof I have hereunto set my hand and seal, this fifteenth day of May, in the year of our Lord one thousand eight hundred and twenty-six.

STEPHEN JUMEL. [L. S.]

Signed, sealed, and delivered in presence of—
R. I. MACY.
WM. A. G. BARRET.

CITY AND COUNTY OF NEW YORK, *ss:*

103 Personally appeared before me R. S. Macy, known to me to be the person whose name is subscribed to the above instrument as a witness, who being by me duly sworn, did depose and say that he was present and witnessed the signing, sealing, and execution of the above instrument by the said Stephen Jumel, and that he is the party described in the said instrument, which being to me satisfactory proof of its due execution, I do allow the same to be recorded.

WASHINGTON Q. MORTON,
Commissioner to take Acknowledgements, &c.

NEW YORK, *June 29th*, 1826.

CONSULATE OF THE UNITED STATES OF AMERICA, *Paris.*

Be it known that on this 15th day of May, in the year of our Lord one thousand eight hundred and twenty-six, and of the Independence of the United States of America the fiftieth, before me, Isaac Cox Barret, consul of the United States of America for Paris, &c., agent of claims, personally came and appeared Stephen Jumel, the constituent named in the within letter of attorney, and acknowledged the same to be his

free and voluntary act and deed for the purposes therein set forth.

104 In testimony whereof I have hereunto set my hand and seal of office the day and year above written.

[L. S.] I. COX BARRET,
Consul of the U. S.

I hereby certify that I have compared the preceding with the original record of an instrument which is recorded in the office of register of the city and county of New York, in liber 2 of powers of attorney, page 88, and that the same is a correct transcript therefrom, and of the whole of such original record.

Given under my hand this 7th day of April, 1838.

For P. GULICK,
Register of the City and County of New York,
W. COPP,
D. Reg.

105 Also a certified copy of a deed from Stephen Jumel and Eliza Brown Jumel, his wife, to Mary Jumel Bownes, bearing date 30 July, 1827, and recorded in the office of the register of the city and county of New York, on the 1st August, 1827, in liber 223 of conveyances, page 518, which deed was in the words and figures following:

106 This indenture, made the thirtieth day of July, in the year of our Lord one thousand eight hundred and twenty-seven, between Stephen Jumel, late of the city of New York, now of Paris, in France, and Eliza Brown Jumel, his wife, of the first part, and Mary Jumel Bownes of the said city of New York, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of five thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, her heirs, executors, and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto *unto* the said party of the second part, and to her heirs and assigns forever, all that certain lot of land and premises which in a certain indenture made

107 between Gerardus Post and Susan, his wife, and the said Stephen Jumel, bearing date the third day of May, in the year one thousand eight hundred and fourteen, are described as follows: All that certain lot, piece, or parcel of land situate, lying, and being at Harlem Heights, in the Ninth ward of the city of New York, as follows: Beginning at the northwest corner of the Albany post-road at the land now or late of Mrs. Bauer; and thence running along the said road south, fifteen degrees west, one hundred and ninety-one feet; south, eight degrees thirty minutes west, two hundred and eighty-six feet; south, ten degrees fifteen minutes west, two hundred and seventy feet; south, five degrees west, five hundred feet; thence south, fifty-six degrees thirty minutes east, nine hundred and fifty feet to the middle of the Fifth avenue laid out by the commissioners; thence running along the said avenue north, thirty-two degrees thirty minutes east, nine hundred and eighty feet to Mrs. Bauer's line; thence north, fifty-one degrees west, along the fence fifteen hundred and twenty feet to the post-road and place of beginning, containing twenty nine acres and

two rods; and bounded on the north by land now or late
108 of said Mrs. Bauer, and on the south by lot number seven; on the east by lots numbers fifteen, fourteen, thirteen, and part of lot number twelve; on the west by the Albany post-road and number six, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situated at Haerlem Heights, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigail his wife, conveyed to the said Leonard Parkinson, by a certain indenture bearing date the twenty-seventh day of August, in the year one thousand seven hundred and ninety-nine, and recorded in the office of the clerk of the city and county of New York, in lib. number fifty-seven of conveyances, &c., page 354, the twenty-first day of January, in the year one thousand eight hundred, and in the secretary's office of the State of New York, in lib. deeds indorsed M. R., page 110, &c., the twenty-fourth day of January, in the year one thousand eight hundred and three, reference being thereunto had will more fully appear:

109 Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to her and their own proper use, benefit, and behoof forever.

And the said Stephen Jumel for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the second part, her heirs and assigns, that the said Stephen Jumel, at the time of the sealing and delivery of these presents, was lawfully seized in his own right of a good, absolute, and indefeasible estate of inheritance, in fee-simple, of and in all and singular the above-granted, bargained, and described premises, with the appurtenances,
110 and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner and form aforesaid, and that the said party of the second part, her heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy, the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons, lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature and kind soever.

And also that the said parties of the first part and their heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore, granted premises, by, from, under, or in trust for them, shall and will, at any time or times hereafter, upon the reasonable request, and
111 at the proper costs and charges in the law, of the said party of the second part, her heirs and assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such

further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, her heirs and assigns forever, as by the said party of the second part, her heirs or assigns, or her or their counsel learned in the law, shall be reasonably devised, advised, or required.

And the said Stephen Jumel and his heirs, the above-described and hereby-granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, her heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above-written.

112 STEPHEN JUMEL, [L. S.]
By his attorney ELIZA B. JUMEL.
ELIZA JUMEL. [L. S.]

Sealed and delivered in presence of—
JAS. M. CUMMINGS.

CITY AND COUNTY OF NEW YORK, *ss:*

On this first day of August, in the year one thousand eight hundred and twenty-seven, before me came Eliza B. Jumel, of the city of New York, to me known to be the person described in and who executed the foregoing deed, and to me known to be the person described in a certain letter of attorney, dated the fifteenth day of May, in the year of our Lord *one Lord* one thousand eight hundred and twenty-six, executed by Stephen Jumel, late of the city of New York, but now of Paris, which said letter of attorney was at the same time shown to me, and is recorded in the office of the register in and for the city and county of New York, in lib. No. 2 of powers of attorney, page 88, and to me acknowledged the said deed to be her act and deed, and to be the act and deed of him, the said Stephen Jumel; and the said Eliza Jumel, on a private examination, separate and apart from her said husband,
113 acknowledged that she executed said deed freely, without any fear or compulsion of her said husband, the said Stephen Jumel, whereupon I allow said deed to be recorded.

WILLIAM KENT,
Commissioner to take affits. & ackts. of deeds, &c., in & for the City & County of New York.

Recorded in the office of register in and for the city and county of New York, in liber. 223 of conveyances, page 518, on the 1st day of August, 1827, at 54 minutes past 2 o'clock p. m.

Exam'd by—

JAS. W. LENT, *Register.*

114 Also, a certified copy of a deed of trust from Mary Jumel Bownes to Michael Werckmeister, bearing date the 11th day of December, 1827, and recorded in the office of the register of the city and county of New York, on the 21st day of November, 1828, in liber. 243 of conveyances, page 67; which said deed conveys the aforesaid lot number six; also lot number five on said map, containing 39 acres, 1 rood; also the lot corner of Broadway and Liberty; also the lot situated in Liberty street

mentioned in said declaration, which said trust-deed is in the words and figures following:

115 This indenture, made this eleventh day of December, in the year of our Lord one thousand eight hundred and twenty-seven, between Mary Jumel Bownes, of the city of New York, of the first part, and Michael Werckmeister, of the same city, merchant, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to her in hand paid at and before the ensealing and delivery of these presents by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, hath granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot of land and premises which, in a

116 certain indenture made between Gerardus Post and Susan, his wife, and Stephen Jumel, bearing date the third day of May, in the year one thousand eight hundred and fourteen, are described as follows: All that certain lot, piece, or parcel of land situate lying and being at Harlem Heights, in the ninth ward of the city of New York, as follows: Beginning at the northwest corner of the Albany post-road at the land now or late of Mrs. Baurs, and thence running along the said road south fifteen degrees west one hundred and ninety-one feet, south and eight degrees thirty minutes west, two hundred and eighty-six feet south, ten degrees fifteen minutes west two hundred and seventy feet, south five degrees west five hundred feet; thence south fifty-six degrees thirty minutes east nine hundred and fifty feet to the middle of the Fifth avenue laid out by the commissioners; thence running along the said avenue north thirty-two degrees thirty minutes east nine hundred and eighty feet to Mrs. Bauer's line; thence north fifty-one degrees west along the fence fifteen hundred and twenty feet to the post-road and place of beginning, containing twenty-nine acres and two rods, and bounded

117 on the north by land now or late of said Mrs. Bauer, and on the south by lot number seven; on the east by lots number fifteen, fourteen, thirteen, and part of lot number twelve; on the west by the Albany post-road, and number six, according to a map made by Charles Loss, one of the city surveyors of the estate of Leonard Parkinson, esq., situated at Harlem Heights, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigial, his wife, conveyed to the said Leonard Parkinson, by a certain indenture bearing date the twenty-seventh day of August, in the year one thousand seven hundred and ninety-nine, recorded in the office of the clerk of the city and county of New York, in lib. number fifty-seven of conveyances, &c., page 354, the twenty-first day of January, in the year one thousand eight hundred, and in the secretary's office of the State of New York, in liber-deeds, endorsed M. R., page 110, &c., the twenty-fourth day of January, in the year one thousand eight hundred

118 and three, reference being thereunto had will more fully appear.

Also all that certain other lot of land and premises which, in a certain indenture made between Murry Hoffman, one of the masters of the court of chancery of the State of New York, and Francis Berger, bearing date the thirteenth day of October, in the year one thousand eight hundred and twenty-one, are described as follows: All that cer-

tain lot of land situate at Harlem Heights, in the Ninth ward of the city and county of New York, as follows, to wit: Beginning at the Albany post-road at the northeast corner of lot number four, and running north sixty-three degrees fifteen minutes, west sixteen hundred and ninety feet, to the Hudson River; thence north forty-five degrees west, three hundred feet; north twenty four degrees twenty-five minutes west, two hundred and ninety feet; north fifteen degrees east, two hundred and ten feet; north fifty degrees forty-five minutes west, ninety-
119 one feet; north fifteen degrees thirty minutes east, one hundred and eighty-three feet, to the land of Arden's; thence south seventy-one degrees thirty minutes east, along Arden's line, two thousand one hundred and sixty feet, to the Albany post-road and northeast corner of lot number five; thence along the road south fifteen degrees west, four hundred and sixty-seven feet; south nine degrees west, two hundred and eighty-one feet; south twelve degrees west, two hundred and fifty-eight feet, to the place of beginning, containing thirty-nine acres one rood, and bounded on the north by Arden's land, on the west by the Hudson River, on the south by lot number four, and on the east by the Albany post-road, and numbered five, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, situated at Harlem Heights, March the first, one thousand and eight hundred and ten; also all that certain other piece or
120 parcel of land situate in Second ward of the city of New York, and which was conveyed to the said Stephen Jumel by Daniel Ludlow and Rem. P. Remson, late of the city of New York, merchants, surviving trustees of the estate of the late David Provost, of the city of New York, deceased, by an indenture bearing date the first day of May, A. D. 1812, and recorded in the office of register, in and for the city and county of New York, in liber No. 97 of conveyances, &c., page 394, and which said piece or parcel of land is described in said indenture as follows: All that certain messuage and premises situate at the corner of Broadway and Liberty street, in the city of New York, being part of the said real estate whereof the said David Provost died seized, and is described in a conveyance thereof to the said David Provost from James Duncan and Elizabeth, his wife, bearing date the thirteenth day of May, 1758, all that certain corner dwelling-house, store-house, and lot of ground thereunto belonging, situate and being on the east side of the Broad-way, in the city of New York, containing in breadth in front twenty-six feet or thereabouts, be it more or less, and in the rear
121 twenty-five feet, more or less, and in length on both sides one hundred and ten feet, more or less, bounded in front, west by the Broad-way, east by the ground of the heirs of William De Count, deceased, or their assigns, south by Crown or Duke street, being on the north side thereof; and north by the house and ground now or late in the possession of Richard Tripp Cooper, which heretofore belonged to one Lieutenant Buckley, deceased, together with one-half of the wall of the house, late of the said Buckley, as also a passage-way or alley from the nearest part of the lot thereby granted, of four feet in breadth, and is in the rear of the said lot, which formerly was a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture of lease and release, bearing date the first and second days of November, 1747, as by the said indenture, reference being thereunto had, will more fully and at large appear.

And also, all that other piece or parcel of land situate in the ward of the said city of New York, and which was conveyed to the

said Stephen Jumel by Mary Haight, John E. Haight, Benj.
122 Haight, and Halstead E. Haight, executors of the last will and testament of Benj. Haight, late of the city of New York, in the State of New York, saddler, deceased, by a' indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned piece or parcel of land is described in said last-mentioned indenture as follows: All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground and running thence southerly twenty-three feet or thereabouts; thence westerly twenty feet; thence northerly fifteen feet or thereabouts; thence easterly six feet; thence northerly eight feet; thence easterly fourteen feet to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie; southerly by ground now or late belonging to the said Stephen Jumel; westerly by ground belonging to the heirs of the said testator; and northerly partly by ground belonging to the said heirs of the said testator and partly by ground now or late belonging to the heirs of one Richard Kip, deceased, as by the annexed map (meaning the
123 map annexed to the said last-mentioned indenture) will more fully appear. Together with all and singular the tenements, hereditaments, and appurtenances whatsoever unto the said above-mentioned and described premises in anywise appertaining or belonging; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part in or to the same and every part and parcel thereof, with the appurtenances. To have and to hold the above granted, bargained, and described premises and every part and parcel thereof with the appurtenances unto the said party of the second part, his heirs and assigns forever. In trust nevertheless for the uses and purposes hereinafter mentioned, expressed, and declared, that is to say: In trust that the said party of the second part, and his heirs, collect and receive the rents, issues, and profits of the said above-described and hereby conveyed premises, and every part and parcel thereof, and pay over the same unto Eliza Brown Jumel, (the wife of Stephen
124 Jumel, late of the city of New York, now of Paris, in France,) or at her election suffer and permit her, the said Eliza Brown Jumel, to use, occupy, and possess the said premises, and to have, take, collect, receive, and enjoy the rents and profits thereof, to and for her own separate use and benefit, and to and for such other uses and purposes as the said Eliza Brown Jumel shall please and think fit at her own free will and pleasure and not subject to the control or interference of her present or any future husband, and the receipt and receipts of her, the said Eliza Brown Jumel, shall at all times be good and sufficient discharges for such payments and for such rents and profits to him, the said party of the second part, his heirs, executors, and administrators, and to the person and persons who are or shall be liable to pay the same. And upon this further trust, that the said party of the second part, or his heirs, lease, demise, let, convey, assure, and dispose of all and singular the said above-described premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on such rent or rents, for such price or prices, at such
125 time or times, to such uses, intents, and purpases, and in such manner and form as she, the said Eliza Brown Jumel, notwithstanding her present or any future coverture, as if she were a feme sole, shall, by any instrument in writing, executed in the presence of any

two credible witnesses, order, direct, limit, or appoint, and, in case of an absolute sale of said premises, or of any part thereof, to pay over the purchase-money to the said Eliza Brown Jumel, or invest the same as she shall order and direct; and upon this further trust, upon the decease of the said Eliza Brown Jumel, to convey the said above-described premises, or such parts thereof as shall not have been previously conveyed by the said party of the second part, or his heirs, and with respect to which no direction or appointment shall be made by the said Eliza Brown Jumel in her life-time, to the heirs of the said Eliza Brown Jumel, in fee-simple, and pay over to the heirs of the said Eliza Brown Jumel such moneys as shall remain in the hands or under the control of the said party of the second part or his heirs arising from collections of the rents and profits, or the proceeds of the sales *of the sales*
126 of the said above-described premises, or any part thereof, provided, however, that the said party of the second part and his heirs, shall be at liberty at all times to deduct and retain all reasonable and necessary costs, charges, and expenses attending the execution of the trusts hereby reposed.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

MARY JUMEL BOWNES. [L. S.]
M. WERKMEISTER. [L. S.]

Sealed and delivered in the presence of—
W. C. WETMORE.

STATE OF NEW YORK,
City & County of New York, ss:

On the fifteenth day of January, A. D. 1828, before me personally appeared Mary Jumel Bownes and Michael Werckmeister, known to me to be the same persons described, and who have executed the within deed, and they severally executed the same as their act and deed.

W. C. WETMORE,
Commr., &c.

127 The complainant's counsel then offered in evidence all the matter contained in the aforesaid bill of exceptions, from page 113 to page 146, both inclusive, embracing all the deeds to and from Stephen Jumel, of the Unal property down to and including the title from Werckmeister, which were given in evidence at that trial, which was as follows.

128 Also, a deed from Leonard Parkinson to Stephen Jumel, bearing date the 28th April, 1810, and recorded in the office of the register of the city and county of New York, on the 25 June, 1810, in liber 88 of conveyances, page 86, conveying lot number eight (8) on the aforesaid map, containing 36 acres and 1 rood.

Also, a deed from Stephen Jumel and Eliza B. Jumel, his wife, to Benjamin Desobry, bearing date 3 June, 1815, and recorded in the office of the register of the city and county of New York, on the 30th June, 1815, in liber 110 of conveyances, page 324, and which said deed conveys lot number *number* eight, and is in the words and figures following:

129 This indenture of three parts made this third day of June, in the year of our Lord one thousand eight hundred and fifteen, between Stephen Jumel, of the city of New York, merchant, of the first part, Eliza Brown Jumel, of the same place, his wife, of the second part,

and Benjamin Desobry of the city of New York, merchant, of the third part.

Whereas the said Stephen Jumel, in consideration of the love and affection he bears the said Eliza Brown Jumel, is desirous of settling on her during her natural life, in case she shall survive the said Stephen Jumel, the property hereinafter described and conveyed:

Now this indenture witnesseth that for and in consideration of the premises and of the sum of one dollar to him, the said party of the first part, in hand paid by the said Benjamin Desobry, the party hereto of the third part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said party of the first part, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien,
130 release, convey, and confirm unto the said Benjamin Desobry and to his heirs, all that certain lot, piece, or parcel of land situate, lying, and being at Harlem Heights, in the Ninth ward of the city of New York, as follows: beginning at the south-west corner of the land at the Albany post-road and running along Beekman's land south sixty degrees east three hundred and seventy feet, south sixty-five degrees thirty minutes east one hundred and forty feet, south sixty degrees east three hundred and thirty-five feet to Harlem River, thence along Harlem River north fifty-six degrees east ninety-five feet, north thirty-four degrees thirty minutes east one hundred and twenty-nine feet, north twenty degrees ten minutes east two hundred and twenty-two feet, north fifty-seven degrees twenty-five minutes east two hundred and seventy feet, north forty-three degrees thirty minutes east one hundred and sixty feet, north twenty-five degrees east one hundred and forty feet, north ten degrees fifty minutes east three hundred and eighty feet to George Wear's land; thence up the hill along George Wear's line north forty-seven degrees forty-five minutes west seven hundred and twenty-nine feet, north
131 forty-seven degrees west two hundred and eighty feet, north fifty degrees west three hundred and ninety feet, north six degrees west seventy-six feet to the Albany post-road; thence along the road south fourteen degrees fifteen minutes west three hundred and forty feet, south seven degrees west two hundred and sixty feet, due south one hundred and forty feet, south one degree thirty minutes west two hundred and twenty-seven feet, south four degrees thirty minutes west one hundred and fifteen feet, south twelve degrees thirty minutes west one hundred and eighty-eight feet, south twenty-two degrees thirty minutes west one hundred and seventy feet, south twenty degrees thirty minutes west three hundred and three feet, to the place of beginning; containing thirty-six acres and one rood, and bounded on the north by the land of George Wear, on the east by Harlem River, on the south by Beekman's land, and on the west by the Albany post-road, and numbered eight, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esqr.,
132 situate at Harlem Heights aforesaid, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigail, his wife, conveyed to the said Leonard Parkinson, party of the first part, by a certain indenture bearing date the twenty-ninth day of August, in the year one thousand seven hundred and ninety-nine, and recorded in the office of the clerk of the city and county of New York, in liber No. 57 of conveyances, &c., page 354, the twenty-first day

of January, one thousand eight hundred, and in the secretary's office of the State of New York, in liber deeds, endorsed M R, page 110, &c., the twenty-fourth day of January, one thousand eight hundred and three, reference being thereto had will more fully appear. Together with all and singular the privileges, advantages, hereditaments, and appurtenances whatsoever, unto the said above mentioned and described premises in anywise appertaining or belonging, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower, and right of dower,
133 property, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the same and every part and parcel thereof, with the appurtenances, as in and by a certain indenture made the twenty-eighth of April, one thousand eight hundred and ten, between Leonard Parkinson, of Kimersly Castle, county of Hereford and Kingdom of Great Britain, by Leonard Parkinson, of Harlem Heights, in the city and county of New York, his true and lawful attorney, by virtue of the power therein recited, of the first part, and Stephen Jumel, of the city of New York, of the second part, and recorded in the office of the clerk of the city and county of New York, in liber No. 88 of conveyances, &c., page 86, reference being thereto had will appear; to have and to hold all the said lot, piece, or parcel of land and all and singular the premises hereby granted, or intended so to be, with their and every of their members and appurtenances, unto the said Benjamin Desobry, and his heirs, to the use and behoof of him, the said Stephen Jumel, and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste & form,
134 and after his decease to the use and behoof of the said Eliza Brown Jumel for and during the term of her natural life, and from and after her decease to the use and behoof of the said Stephen Jumel, his heirs and assigns forever.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.

STEPHEN JUMEL. [L. S.]
BENJAMIN DESOBRY. [L. S.]
ELIZA JUMEL. [L. S.]

Sealed and delivered in presence of—
MURRAY HOFFMAN.

STATE OF NEW YORK, *ss:*

On the fifth day of June, in the year 1815, appeared before me, Murray Hoffman, esquire, of the city of New York, to me known, and being by me duly sworn, did depose and say that he saw Stephen Jumel, Benjamin Desobry, and Eliza Jumel, known to be the same persons described in and who executed the above indenture, duly execute the same, and that he, the deponent, became a subscribing witness thereto, and finding therein no alterations I allow the same to be recorded.

JAMES A. HAMILTON,
M'r in Ch'y.

135 OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 30th day of June, A. D. 1815, at 12 o'clock 3 minutes p. m., in liber 110 of conv'es, at page 324, and certify the same to be a correct transcript therefrom and the whole of said instrument.

In testimony whereof, I have hereunto subscribed my name and affixed my official seal this 25th day of Nov'r, 1871.

(Sg'd) MICHAEL CONNOLLY,
Register.

136 Also, a certified of a deed between Stephen Jumel and Eliza Brown Jumel, of the one part, Benjamin Desobry, of the one part, and Eloy Berger and John R. Skiddy, of the other part, conveying said lot eight, bearing date the 13th January, 1825, and recorded in the office of the register of the city and county of New York on the 31st March, 1825, in liber 125 of conveyances, page 290, and which said deed is in the words and figures following:

137 Recorded for and at the request of Chas. Graham, this 31st day of March, 1825, at 5 min. past 3 o'clock p. m.

This indenture, made the thirteenth day of January, one thousand eight hundred and twenty-five, between Stephen Jumel, of the city of New York, in the United States of America, merchant, Eliza Brown Jumel, his wife, both now residing in the Place Vendome, in the city of Paris, and kingdom of France, and Benjamin Desobry, of the city of New York aforesaid, merchant, of the one part, and Eloy Berger, a citizen of the United States of America, residing in the rue due Marche Saint Honore, in the said city of Paris, dénè medicine, and John R. Skiddy, also a citizen of the United States of America, residing in the rue Mode Janet Eustache, in the said city of Paris, mariner, of the other part. Whereas, by a certain indenture bearing date the third day of June, one thousand eight hundred and fifteen, recorded in the office of the register in and for the city and county of New York aforesaid, in liber 110, page 324, on the thirtieth day of June, one thousand eight hundred and fifteen, and made between the said Stephen Jumel, of the
138 first part, the said Eliza Brown Jumel, his wife, of the second part, and the said Benjamin Desobry, of the third part, after reciting as therein is recited, it is witnessed that, for the consideration therein mentioned, he, the said Stephen Jumel, did grant, bargain, sell, alien, release, convey, and confirm unto the said Benjamin Desobry, and to his heirs, all that certain piece or parcel of land and premises therein, and being after particularly described, with all and singular the privileges, advantages, and appurtenances to the same belonging or appertaining, to hold the same, to him, the said Benjamin Desobry and his heirs, to the use and behoof of the said Stephen Jumel and his assigns for and during the term of his natural life, without impeachment of or for any use and behoof of the said Eliza Brown Jumel for and during the term of her natural life, and from and after her decease to the use and behoof of the said Stephen Jumel, his heirs and assigns, forever.

Now, this indenture witnesseth that, for and in consideration
139 of the sum of one dollar to each of them, the said Stephen Jumel, Eliza Brown Jumel, his wife, and Benjamin Desobry, in hand paid by the said Eloy Berger and John R. Skiddy, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said Stephen Jumel, hath relinquished, revoked, and given up, and by these presents doth relinquish, revoke, and give up, all and singular, his life-estate under and by virtue of the said hereinbefore in part recited indenture, and all other his right, title, and interest therein or thereto, or to any part or parcel thereof; and he doth

hereby also release, acquit, and discharge the said Benjamin Desobry of and from the trust so as aforesaid reposed in him, and all and every matter and thing relating thereto; and the said Stephen Jumel and Eliza Brown Jumel have, and each of them hath, as far as they can and lawfully may, granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these do, and each of them doth, grant, bargain, sell, alien, release, convey, and confirm, and the said Benjamin Desobry hath, by and with the consent, direction, and appointment of the said Stephen Jumel and Eliza Brown Jumel,
140 his wife, testified by their being severally made parties to executing hereof, granted, bargained, sold, assigned, transferred, set over, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, transfer, set over, alien, release, convey, and confirm, unto the said Eloy Berger and John R. Skiddy, their heirs and assigns, all that certain lot, or piece, or parcel of land situate, lying, and being at Harlem Heights, in the Ninth ward of the city of New York, as follows: Beginning at the southwest corner of the land at the Albany post-road, and running along Beekman's land south sixty degrees east three hundred and seventy feet, south sixty-five degrees thirty minutes east one hundred and forty feet, south sixty degrees east three hundred and thirty-five feet, to Harlem River; thence, along Harlem River, north fifty-six degrees east ninety-five feet, north thirty-four degrees thirty minutes east one hundred and twenty-nine feet, north twenty degrees ten minutes east two hundred and twenty-two feet, north fifty-seven degrees twenty-five minutes east two hundred and seventy feet, north forty-three de-
141 grees thirty minutes east one hundred and sixty feet, north twenty-five degrees east one hundred and forty feet, north ten degrees fifty minutes east three hundred and eighty feet, to George Wear's land; thence up the hill, along George Wear's line, north forty-seven degrees forty-five minutes west seven hundred and twenty-nine feet, north forty-seven degrees west three hundred and ninety feet, north six degrees west seventy-six feet, to the Albany post-road; and thence, along the road, south fourteen degrees sixteen minutes west three hundred and forty feet, south seven degrees west two hundred and sixty feet, due south one hundred and forty feet, south one degree thirty minutes west two hundred and twenty-seven feet, south four degrees thirty minutes west one hundred and fifteen feet, south twelve degrees thirty minutes west one hundred and eighty-eight feet, south twenty-two degrees thirty minutes west one hundred and seventy feet, south twenty degrees thirty minutes west three hundred and three feet, to place of beginning, containing thirty-six acres and one rood, and bounded on the north by the land of George Wear, on the east by Harlem River, on the south by
142 Beekman's land, and on the west by the Albany post-road, and numbered eight, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situate at Harlem Heights aforesaid, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigail, his wife, conveyed to the said Leonard Parkinson, by a certain indenture bearing date the twenty-ninth day of August, one thousand seven hundred and ninety-nine, and recorded in the office of the clerk of the city and county of New York, in liber No. 57 of conveyances, &c., page 354, the twenty-first day of January, one thousand eight hundred, and in the secretary's office of the State of New York, in lib.-deeds, endorsed M R, page 110, &c., the twenty-fourth day of January, one thousand eight hundred and three, reference being thereunto had, will more fully appear; to-

gether with all and singular the privileges, advantages, hereditaments, and appurtenances whatsoever, to the said above-mentioned and described premises in any wise appertaining or belonging, and the reversion
143 and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, claim, and demand whatsoever, as well in law as in equity, of the said Stephen Jumel, Eliza Brown Jumel, and Benjamin Desobry, or any or either of them, of, in, or to the same, and every part and parcel thereof, with the appurtenances, to have and to hold all the said lot, piece, or parcel of land, and all and singular the premises hereby granted, or intended so to be, with their, and every of their, members, appurtenances, unto the said Eloy Berger and John R. Skiddy, their heirs and assigns, upon trust, for the only and absolute use and behoof of the said Eliza Brown Jumel, her heirs and assigns, forever, apart from, and independent of, the debts, control, and engagements of her husband; and also that they, the said Eloy Berger and John R. Skiddy, and their heirs, shall be seized and possessed of the same lands and premises upon trust, to sell and dispose of the same, if and when directed by the said Eliza Brown Jumel, and to hold the money to arise by or from such sale and disposition in trust for the said Eliza Brown Jumel, and her assigns, to
144 and for her own use, benefit, and disposal, separate, apart, from the said Stephen Jumel, her husband, and not to be subject to his debts, contracts, control, or engagements.

In witness whereof the parties to the presents hereunto set their hands and seals the day and year first above written.

STEPHEN JUMEL. [L. S.]
ELIZA JUMEL. [L. S.]
BENJAMIN DESOBRY. [L. S.]
ELOY BERGER. [L. S.]
JOHN R. SKIDDY. [L. S.]

Signed, sealed, and delivered at the city of Paris aforesaid, by the above-named Stephen Jumel, Eliza Jumel, Benjamin Desobry, Eloy Berger, and John R. Skiddy—the name Eloy Berger having been substituted throughout the deed for that of several places where erasures are perceptible previous to the execution thereof, in the presence of—

ROBERT D. HOPE,
of Gravesend, London, now residing No. 72 Dauphine, Paris.
JAS. HURD,
Late of Honiton, Devon., gent, now rue Behzy, No. 6, Paris.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States of America to His Most Christian Majesty, certifies that on the thirteenth day of January, 1825, personally appeared before him the above-named Stephen Jumel, Eliza Jumel, Eloy
145, 146 Berger, and John R. Skiddy, to him well known, and Benjamin Desobry, of whom evidence, upon oath, has been produced to him that he is the person described in the above instrument, who signed the said instrument in his presence and acknowledged it to be their act and deed for the purposes therein mentioned.

Given under the seal of this legation, at Paris, this 18th day of January, 1825.

(Signed) JAMES BROWN. [L. S.]

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 31st day of March, A. D. 1825, at 3 o'clock 5 minutes, in liber 185 of conveyances, page 290, and certify the same to be a correct transcript therefrom and of the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 16th day of January, 1872.

(Signed) F. SIGEL, *Register.*

147 Also a deed from Eloy Berger and John R. Skiddy to Mary Jumel Bownes, bearing date January 1st, 1828, and recorded in the office of the register of the city and county of New York, on the 24' May, 1828, in liber 234 of conveyances, page 324, together with a request, in writing, by said Eliza B. Jumel that the said grantors execute the same, which deed and request are in the words and figures following:

148 (Copy.)

Deed with lineal covenant.

This indenture, made the first day of January, in the year of our Lord one thousand eight hundred and twenty eight, between Eloy Berger, a citizen of the United States of America, residing in the city of Paris, and kingdom of France, Dr. in medicine, and John R. Skiddy, of theci ty of New York, mariner, of the first part, and Mary Jumel Bownes, of the said city of New York, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of ten thousand dollars, lawful money of the United States of America, to them in hand paid, at or before the ensealing and delivery of these presents, by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, her heirs, executors, and administrators, forever released and discharged from the same, by these presents have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to her heirs and assigns forever, all that
149 certain lot, piece, or parcel of land, situate, lying, and being at Harlem Heights, in the ward of the city of New York, as follows: beginning at the southwest corner of the land at the Albany post-road, and running along Beekman's land south sixty degrees east three hundred and seventy feet, south sixty-five degrees thirty minutes east one hundred and forty feet, south sixty degrees east three hundred and thirty feet, to Harlem River; thence, along Harlem River, north fifty-six degrees east ninety-five feet, north thirty-four degrees thirty minutes east one hundred and twenty-nine feet, north twenty degrees ten minutes east two hundred and twenty-two feet, north fifty-seven degrees twenty-five minutes east two hundred and seventy feet, north forty-three degrees thirty minutes east one hundred and sixty feet, north twenty-five degrees east one hundred and forty feet, north ten degrees fifty minutes east three hundred and eighty feet, to George Wear's land; thence up the hill, along George Wear's line, north forty-seven degrees forty-five minutes west seven hundred and twenty-nine feet, north forty-seven degrees west two hundred and eighty feet, north fifty de-
150 grees west three hundred and ninety feet, north six degrees west seventy-six feet, to the Albany post-road; thence, along the

road, south fourteen degrees fifteen minutes west three hundred and forty feet, south seven degrees west two hundred and sixty feet, due south one hundred and forty feet, south one degree thirty minutes west two hundred and twenty-seven feet, south four degrees thirty minutes west one hundred and fifteen feet, south twelve degrees thirty minutes west one hundred and eighty-eight feet, south twenty-two degrees thirty minutes west one hundred and seventy feet, south twenty degrees thirty minutes west three hundred and three feet, to the place of beginning; containing thirty-six acres and one rood, and bounded on the north by the land of George Wear, on the east by Harlem River, on the south by Beekman's land, and on the west by the Albany post-road, and numbered eight, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situate at Harlem Heights aforesaid, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which

William Kenyon, of the city of New York, merchant, and Abi-
151 gail, his wife, conveyed to the said Leonard Parkinson by a certain indenture bearing date the twenty-ninth day of August, in the year one thousand seven hundred and ninety-nine, and recorded in the office of the clerk of the city and county of New York, in lib. No. 57 of conveyances, &c., page 354, the twenty first day of January, one thousand eight hundred, and in the secretary's office of the State of New York, in lib. deeds, endorsed M. R., page 110, &c., the twenty-fourth day of January, one thousand eight hundred and three, reference being thereunto had will more fully appear; together with all and singular the tenements, hereditaments, and appurtenances whatsoever unto the said above-mentioned and described premises in anywise appertaining or belonging, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the same and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said

party of the second part, her heirs and assigns, to her and their
152 own proper use, benefit, and behoof forever. And the said Eloy Berger and John R. Skiddy, for themselves, their heirs, executors and administrators, and for each and every of them, do covenant, promise, and agree to and with the said party of the second part, her heirs and assigns, by these presents, that the said parties of the first part have not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby or by means whereof the said above-mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered in any manner or way whatsoever.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

ELOY BERGER. [L. S.]
JOHN R. SKIDDY. [L. S.]

Sealed and delivered in the presence of—
HENRY ROBINSON.
W. C. WETMORE, as to the execution by John R. Skiddy.

I hereby request the within-named grantors to execute the within deed. Dated, New York, January 1, 1828.

ELIZA B. JUMEL.

153 STATE OF NEW YORK,
City & County of New York, ss:

On the thirteenth day of May, A. D. 1828, before me personally appeared John R. Skiddy, known to me to be one of the persons described in and who have executed the within deed, and he duly acknowledged the same as his act and deed in my presence. I therefore allow it to be recorded as his act and deed.

W. C. WETMORE,
Com'r, &c.

PARIS, *8th February*, 1828.

Before me, James Brown, envoy extraordinary and minister plenipotentiary of the United States of America to His Majesty the King of France, personally appeared Eloy Berger, within named, to me personally known, and acknowledged the execution of the within instrument as his free act and deed.

[L. S.] JAMES BROWN.

Recorded in the office of register in and for the city and county of New York, in lib. 234 of conveyances, page 524, on the 24th day of May, 1828, at 55 minutes past 2 p. m.

Examin'd by—

JAS. W. LENT, *Register.*

154 Also a deed from Mary Jumel Bownes to Michael Werckmeister, bearing date the 13th May, 1828, and recorded in the office of the register of the city and county of New York, on the 21 November, 1828, in liber 243 of conveyances, page 75, conveying the said lot eight, which said deed is in the words and figures following:

155 This indenture made the thirteenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, between Mary Jumel Bownes, of the city of New York of the first part, and Michael Werckmeister, of the same city, merchant, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to her in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece or parcel of land situate, lying and being at Harlem Heights, in the ward of the city of New York, as follows: Beginning at the southwest corner of the land on the Albany post-road and running along Beekman's land south sixty degrees east three hundred and seventy

156 feet, south sixty-five degrees thirty minutes east one hundred and forty feet, south sixty degrees east three hundred and thirty-five feet to Harlem River; thence east along Harlem River, north fifty-six degrees east ninety-five feet, north thirty-four degrees thirty minutes east one hundred and twenty-nine feet, north twenty degrees ten minutes east two hundred and twenty-two feet, north fifty-seven degrees twenty-five minutes east two hundred and seventy feet, north forty-three degrees

thirty minutes east one hundred and sixty feet, north twenty-five degrees east one hundred and forty feet, north ten degrees fifty minutes east three hundred and eighty feet to George Wear's land; thence up the hill along George Wear's line, north forty-seven degrees forty-five minutes west seven hundred and twenty-nine feet, north forty-seven degrees west two hundred and ninety feet, north fifty degrees west three hundred and ninety feet, north six degrees west seventy-six feet to the Albany post-road; thence along the said road south fourteen degrees fifteen minutes west three hundred and forty feet, south seven degrees west two hundred and sixty feet, due south one hundred and forty feet, south
157 one degree thirty minutes west two hundred and twenty-seven feet, south four degrees thirty minutes west one hundred and fifteen feet, south twelve degrees thirty minutes west one hundred and eighty-eight feet, south twenty-two degrees thirty minutes west one hundred and seventy feet, south twenty degrees thirty minutes west three hundred and three feet to the place of beginning, containing thirty-six acres and one rood, and bounded on the north by the land of George Wear, on the east by Harlem River, on the south by Beekman's land, and on the west by the Albany post-road, and numbered eight according to a map made by Charles Loss, one of the city surveyors of the estate of Leonard Parkinson, esquire, situate at Harlem Heights aforesaid, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigail, his wife, conveyed to the said Leonard Parkinson, by a certain indenture, bearing date the twenty-ninth day of August, in the year one thousand seven hun-
158 dred and ninety-nine, and recorded in the office of the clerk of the city and county of New York, in lib. No. 57 of conveyances, page 354, the twenty-first day of January, one thousand eight hundred, and in the secretary's office of the State of New York, in lib. deeds, endorsed M. R., page 110, &c., the twenty-fourth day of January, one thousand eight hundred and three, reference being thereunto had, will more fully appear, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted and described premises with the appurtenances unto the said party of the second part, his heirs and assigns, to his and their own proper use and behoof forever. In trust, nevertheless, for the uses and purposes hereinafter mentioned, ex-
159 pressed and declared, that is to say, in trust that the said party of the second part, of his heirs, collect and receive the rents, issues and profits of the said above-described and hereby conveyed premises and every part and parcel thereof, and pay over the same unto Eliza Brown Jumel, the wife of Stephen Jumel, late of city of New York, now of Paris, in France, or at her election suffer and permit her, the said Eliza Brown Jumel, to use, occupy and possess the said premises, and to have, take, collect, receive and enjoy the rents, issues and profits thereof, to and for her own separate use, benefit, and to and for such other uses and purposes as the said Eliza Brown Jumel shall please and think fit at her own free will and pleasure, and not subject to the control and interference of her present or any future husband, and the receipt and receipts of her, the said *the said* Eliza Brown Jumel,

shall at all times be good and sufficient discharges for such payments and for such rents and profits to him the said party of the second part, his heirs, executors and administrators, and to the person or persons who are or shall be liable to pay the same; and
160 upon this further trust, th' the said party of the second part, or his *his* heirs, lease, demise, let, and convey, assure and dispose of all an' singular the said above-described premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, intents, and purposes, and in such manner and form as she, the said Eliza Brown Jumel, notwithstanding her present or any future coverture, as if she were a feme sole, shall, by any instrument in writing executed in the presence of any two credible witnesses, order, direct, limit, and appoint, and, in case of an absolute sale of said premises, or of any part thereof, to pay over the purchase-money to the said Eliza Brown Jumel, or invest the same as she shall order and direct; and upon this further trust, upon the decease of the said Eliza Brown Jumel, to convey the said above-described premises, or such parts thereof as shall not have been previously conveyed by the said party of the second part, or his heirs, and with respect to which no direction or appoint-
161 ment shall be made by the said Eliza Brown Jumel in her life-time, to the heirs of the said Eliza Brown Jumel, in fee-simple, and pay over to the heirs of the said Eliza Brown Jumel such monies as shall remain in the hands or under the control of the said party of the second part, or his heirs, arising from collections of the rents and profits, or the proceeds of the sales of the said above-described premises, or any part thereof; provided, however, that the said party of the second part and his heirs shall be at liberty at all times to deduct and retain all reasonable and necessary costs and charges and expenses attending the execution of the trusts hereby reposed.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

MARY JUMEL BOWNES. [L. S.]
M. WERCKMEISTER. [L. S.]

Sealed and delivered in the presence of—
W. C. WETMORE.

STATE OF NEW YORK,
City and County of New York, ss:

On the thirteenth day of May, A. D. 1828, before me personally appeared Mary Jumel Bownes and Michael Werckmeister, to me
162 known to be the same persons described in and who have executed the foregoing indenture, and they severally duly executed and acknowledged the same as their act and deed.

I therefore allow it to be recorded.

W. C. WETMORE,
Comm'r, &c.

OFFICE OF THE REGISTRY OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 21st day of November, A. D. 1828, at 3 o'clock 10 min. p. m., in liber 293 of con's, page 75, and certify the same to be a correct transcript therefrom and of the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 30th day of March, 1872.

F. SIGEL, *Register.*

163 The complainants' counsel then offered in evidence all the matter contained in the aforesaid bill of exceptions from page 147 to page 170, both inclusive, embracing deeds to and from Stephen Jumel of the down-town property, including the title to Werckmeister, which was as follows:

164 Also a certified copy of a deed from Daniel Ludlow and Rem. P. Remsen, trustees to Stephen Jumel, bearing date the 1st day of May, 1812, and recorded in the office of the register of the city and county of New York, on the 6th day of May, 1812, in liber 97 of conveyances, page 394, conveying unto the said Stephen Jumel in fee-simple the lot on the northeast corner of Broadway and Liberty street, in the city of New York. This lot and the lot in Liberty street hereinafter mentioned, taken together, comprise all the property mentioned in the declaration or in any of the documents given in evidence, which was bounded on either Broadway or Liberty street.

Also a certified copy of a deed between Stephen Jumel, of the first part, Eliza Brown Jumel, his wife, of the second part, and Robert Jenkins Macy, of the third part, bearing date 18 January, 1826, and recorded in the office of the register of the city and county of New York, on the 27th of March, 1826, in liber 201 of conveyances, page 172; which said deed is in the words and figures following:

165 This indenture, made this eighteenth day of January, in the year of our Lord one thousand eight hundred and twenty-six, between Stephen Jumel, of the city of New York, in the United States of America, merchant, of the first part; Eliza Brown Jumel, his wife, of the second part, (now residing in the Place Vendome, in the city of Paris and kingdom of France,) and Robert Jenkins Macy, a citizen of the United States of America, residing in the Rue St. Marc, No. 12, in Paris aforesaid, mariner, of the third part. Whereas the said Stephen Jumel hath proposed and agreed to settle and assure certain houses and premises in the said city of New York unto and for the use and benefit of his wife, the said Eliza Brown Jumel, and in order to carry the said proposal and agreement properly into effect, he, the said Stephen Jumel, hath agreed to execute the assignment hereinafter contained: Now, this indenture witnesseth, that in pursuance of the aforesaid proposal and agreement, and for and in consideration of the sum of one dollar of lawful money current in the said United States of America to him, the said Stephen Jumel, in hand well and truly paid by the said Rob-

166 ert Jenkins Macy at or before the execution of these presents, the receipt whereof is hereby acknowledged, he, the said Stephen Jumel, hath granted, bargained, sold, assigned, and made over, and by these presents doth grant, bargain, sell, assign, and make over unto the said Robert Jenkins Macy, his executors, administrators, and assigns, all that messuage, tenement, or dwelling-house situate, lying, and being in Liberty street, No. 67 or 70, whichever the case may be, and also all that messuage, tenement, or dwelling-house situate, lying, and being at Broadway, No. 150, both in New York aforesaid, together with all and singular the rights, members, hereditaments, and appurtenances to the same respectively belonging, subject, nevertheless, to a mortgage on the said messuage, tenement, or dwelling-house situate at Broadway, to Eloy Berger, doctor in medicine, for the sum of six thousand dollars, and to all interest due, and to grow due, thereon, and to all rights

and privileges of the said mortgage, to have and to hold the messuages, tenements, or dwelling houses, with the rights, members, and appurtenances to the same severally belonging, unto the said Robert Jenkins Macy, his executors, administrators, and assigns, (subject nevertheless as aforesaid,) for and during the natural life of the said
167 Eliza Brown Jumel, upon trust, nevertheless, to permit and suffer the rents, issues, and profits of the said messuages, tenements, or dwelling-houses to be taken and received by the person who is at present in receipt of the same until otherwise directed, under the hand of the Eliza Brown Jumel, under the power hereinafter contained, such receipts, however, to be for the use and benefit of the said Eliza Brown Jumel, or her assigns, absolutely, separate, and apart from the influences, control, or management of her said husband, and not to be subject or liable to his debts, contracts, or engagements, and to be remitted or paid to her or them accordingly; and her receipt alone, or the receipt of the said Robert Jenkins Macy, his executors, administrators, or assigns, shall be a good and sufficient discharge for the same, but not by way of anticipation. And the said Stephen Jumel doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said Robert Jenkins Macy that he, the said Robert Jenkins Macy, shall and may at all times hereafter (in case the rents, issues, and profits of the said messuages, tenements,
168 or dwelling-houses be not regularly remitted or paid to the said Eliza Brown Jumel, or her assigns, by the person or persons already or hereafter to be appointed to receive the same) have full power and authority to sue for and recover the same by all or any lawful, legal, and necessary ways and means as he or they shall think proper or be advised; and, upon receipt of the same, or any part thereof, to make and give all needful, necessary, and proper receipts, acquittances, and discharges; and also that he, the said Robert Jenkins Macy, his executors, administrators, or assigns, shall have full power and authority to sell, let, and manage the same premises for any term or terms, at the best rent, to the best advantage, and in such manner as he or they shall think most fit and proper, but without taking any fine or foregift on the granting of any such lease or leases; and also that it shall and may be lawful for the said Eliza Brown Jumel, at any time or times hereafter during her natural life, by an instrument or instruments, under her hand, to remove and replace the present receiver of the rents and profits of the same premises, and another or others to appoint in his place and stead, and such new receiver or receivers again to remove and replace, and another or others to appoint as often as she, the said Eliza
169 Brown Jumel, shall think necessary; and also in case the said Robert Jenkins Macy shall, at any time during the natural life of the said Eliza Brown Jumel, happen to die or desire to quit and be discharged of and from the aforesaid trusts, or in case the said Eliza Brown Jumel shall at any time thereafter think proper to appoint any other person or persons as a trustee or trustees in the place or stead of the said Robert Jenkins Macy, it shall and may be lawful for the said Eliza Brown Jumel, by any writing or writings, under her hand and seal, attested by one or more credible witness or witnesses, to appoint any other person or persons in his place or stead, and such person or persons so from time to time to be appointed by the said Eliza Brown Jumel shall have the like power and authority as the trustee appointed in and by these presents. And further, that he, the said Stephen Jumel, shall and will at all times hereafter, at all and every reasonable request of the said Robert Jenkins Macy, his executors, administrators, or assigns,

or such new trustee or trustees as aforesaid, or of the said Eliza Brown Jumel, at his own cost and charges, make, do, and execute, or
170 cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, and things for more effectually and perfectly assuring and confirming the said messuages, tenements, or dwelling-houses, with their appurtenances, unto the said Robert Jenkins Macy, his executors, administrators, or assigns, or such new trustee or trustees as aforesaid, as by the said Robert Jenkins Macy, his executors, administrators, or assigns, such new trustee or trustees as aforesaid, or the said Eliza Brown Jumel, or his, her, or their counsel learned in the law, may be lawfully advised, devised, or required. And further, it is mutually agreed by and between all and every the parties hereto, that the said Robert Jenkins Macy, his executors, administrators, or assigns, or either new trustee or trustees as aforesaid, shall not be answerable or accountable for any more money than shall actually come to his or their hands by virtue of the aforesaid trusts, nor with or for any loss which may happen to such trust-monies, except such loss should happen through his or their wilful neglect or default, and that it shall and may be lawful for him and them to deduct and retain to himself and themselves
171 all such costs, charges, damages, and expenses as they *as they* or either of them may incur, expend, or be put unto in or about the execution of the trusts hereby in him and them reposed; and the said Robert Jenkins Macy, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said Stephen Jumel, his executors, administrators, and assigns, that he, the said Robert Jenkins Macy, his executors, administrators, or assigns, shall and will, as soon as can be from and immediately after the decease of the said Eliza Brown Jumel, by good and efficient assignments and assurances in the law, but at the costs and charges of the said Stephen Jumel, his executors and administrators, or assigns, reassign, and reassure the same messuages, tenements, and premises unto the said Stephen Jumel, his executors, administrators, or assigns, or as he or they shall direct or appoint.

In witness whereof the said parties have to these presents set their hands and seals, the day and year first above written.

STEPHEN JUMEL. [L. S.]
ELIZA B. JUMEL. [L. S.]
R. J. MACY. [L. S.]

Signed, sealed, and delivered at Paris aforesaid, by the above-named parties, the eighteenth day of January, 1826.

ROBT. S. SLOPER,
172 12 *Place Dauphine, Paris.*
JAS. HURD,
Late of Harrison, Devon, now of Paris, Rue Betzy, No. 6.

The undersigned, envoy extraordinary and minister-plenipotentiary of the United States of America to his most Christian Majesty, certifies that on the eighteenth day of January, 1826, personally appeared before him Stephen Jumel, Eliza Brown Jumel, and Robert Jenkins Macy, on the other side named, and to him well known, who signed the instrument on the other side written, and acknowledged it to be their act and deed for the purposes therein mentioned.

Given under the seal of this legation, at Paris, this 18th day of January, 1826.

JAMES BROWN. [L. S.]

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 27th day of March, A. D. 1826, at 10 o'clock 25 min. a. m., in liber of con's, 201, at page 172, and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, this 5th day of December, 1872.

F. SIGEL, *Register.*

173 Also a certified copy of a deed between Robert Jenkins Macy, of the first part, Stephen Jumel, of the second part, Eliza Brown Jumel, of the third part, and Mary Jumel Bownes, of the fourth part, bearing date the 24 November, 1827, and recorded in the office of the register of the city and county of New York, on the 27th November, 1827, in liber 228 of conveyances, page 109, conveying the last above-mentioned lot to the said Mary Jumel Bownes, the said party of the fourth part; which said deed is in the words and figures following:

174 This indenture, made the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and twenty-seven, between Robert Jenkins Macy, of the city of New York, mariner, party of the first part, Stephen Jumel, formerly of the city of New York but at present of Paris, merchant, party of the second part, Eliza Brown Jumel, wife of the said Stephen Jumel, party of the third part, and Mary Jumel Bowne, of the city of New York, party of the fourth part: Whereas, in and by a certain indenture made the fifteenth day of January, in the year one thousand eight hundred and twenty-six, between the said Stephen Jumel, (therein described,) of the city of New York, in the United States of America, merchant, of the first part, Eliza Brown Jumel, his wife, of the second part, (therein described,) now residing in the Place Vendome, in the city of Paris, and kingdom of France, and the said Robert Jenkins Macy, (therein described as) a citizen of the United States of America, residing in the rue Saint Marc, No. 12, in Paris aforesaid, mariner, of the third part, it was recited that the said

175 Stephen Jumel had proposed and agreed to settle and assure certain houses and premises in the said city of New York unto and for the use and benefit of his wife, the said Eliza Brown Jumel; thereupon, in order to carry said proposal and agreement into effect, the said indenture witnesseth, that in pursuance of the aforesaid proposal and agreement, and for and in consideration of the sum of one dollar to him the said Stephen Jumel in hand well and truly paid by the said Robert Jenkins Macy, he, the said Stephen Jumel, had granted, bargained, sold, assigned, and made over, and by the said indenture did grant, bargain, sell, assign, and make over, unto the said Robert Jenkins Macy, his executors, administrators, and assigns, certain messuages and premises in the said indenture described, (and which are hereinafter particularly set forth,) to have and to hold the said messuages and premises unto the said Robert Jenkins Macy, his executors, administrators, and assigns, for and during the natural life of the said Eliza Brown Jumel, upon trust, nevertheless, to permit and suffer the rents, issues, and profits of the said messuages and premises to be taken and received by the

176 person who at the date of said indenture was in receipt of the same until otherwise directed under the hand of the said Eliza Brown Jumel, under the power in the said indenture thereinafter contained, such receipts, however, to be for the use and benefit of the said Eliza Brown Jumel and her assignee absolutely separate and apart from the

or such new trustee or trustees as aforesaid, or of the said Eliza Brown Jumel, at his own cost and charges, make, do, and execute, or
170 cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, matters, and things for more effectually and perfectly assuring and confirming the said messuages, tenements, or dwelling-houses, with their appurtenances, unto the said Robert Jenkins Macy, his executors, administrators, or assigns, or such new trustee or trustees as aforesaid, as by the said Robert Jenkins Macy, his executors, administrators, or assigns, such new trustee or trustees as aforesaid, or the said Eliza Brown Jumel, or his, her, or their counsel learned in the law, may be lawfully advised, devised, or required. And further, it is mutually agreed by and between all and every the parties hereto, that the said Robert Jenkins Macy, his executors, administrators, or assigns, or either new trustee or trustees as aforesaid, shall not be answerable or accountable for any more money than shall actually come to his or their hands by virtue of the aforesaid trusts, nor with or for any loss which may happen to such trust-monies, except such loss should happen through his or their wilful neglect or default, and that it shall and may be lawful for him and them to deduct and retain to himself and themselves
171 all such costs, charges, damages, and expenses as they *as they* or either of them may incur, expend, or be put unto in or about the execution of the trusts hereby in him and them reposed; and the said Robert Jenkins Macy, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said Stephen Jumel, his executors, administrators, and assigns, that he, the said Robert Jenkins Macy, his executors, administrators, or assigns, shall and will, as soon as can be from and immediately after the decease of the said Eliza Brown Jumel, by good and efficient assignments and assurances in the law, but at the costs and charges of the said Stephen Jumel, his executors and administrators, or assigns, reassign, and reassure the same messuages, tenements, and premises unto the said Stephen Jumel, his executors, administrators, or assigns, or as he or they shall direct or appoint.

In witness whereof the said parties have to these presents set their hands and seals, the day and year first above written.

STEPHEN JUMEL. [L. S.]
ELIZA B. JUMEL. [L. S.]
R. J. MACY. [L. S.]

Signed, sealed, and delivered at Paris aforesaid, by the above-named parties, the eighteenth day of January, 1826.

ROBT. S. SLOPER,
172 12 *Place Dauphine, Paris.*
JAS. HURD,
Late of Harrison, Devon, now of Paris, Rue Betzy, No. 6.

The undersigned, envoy extraordinary and minister-plenipotentiary of the United States of America to his most Christian Majesty, certifies that on the eighteenth day of January, 1826, personally appeared before him Stephen Jumel, Eliza Brown Jumel, and Robert Jenkins Macy, on the other side named, and to him well known, who signed the instrument on the other side written, and acknowledged it to be their act and deed for the purposes therein mentioned.

Given under the seal of this legation, at Paris, this 18th day of January, 1826.

JAMES BROWN. [L. S.]

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 27th day of March, A. D. 1826, at 10 o'clock 25 min. a. m., in liber of con's, 201, at page 172, and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal, this 5th day of December, 1872.

F. SIGEL, *Register.*

173 Also a certified copy of a deed between Robert Jenkins Macy, of the first part, Stephen Jumel, of the second part, Eliza Brown Jumel, of the third part, and Mary Jumel Bownes, of the fourth part, bearing date the 24 November, 1827, and recorded in the office of the register of the city and county of New York, on the 27th November, 1827, in liber 228 of conveyances, page 109, conveying the last abovementioned lot to the said Mary Jumel Bownes, the said party of the fourth part; which said deed is in the words and figures following:

174 This indenture, made the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and twenty-seven, between Robert Jenkins Macy, of the city of New York, mariner, party of the first part, Stephen Jumel, formerly of the city of New York but at present of Paris, merchant, party of the second part, Eliza Brown Jumel, wife of the said Stephen Jumel, party of the third part, and Mary Jumel Bowne, of the city of New York, party of the fourth part: Whereas, in and by a certain indenture made the fifteenth day of January, in the year one thousand eight hundred and twenty-six, between the said Stephen Jumel, (therein described,) of the city of New York, in the United States of America, merchant, of the first part, Eliza Brown Jumel, his wife, of the second part, (therein described,) now residing in the Place Vendome, in the city of Paris, and kingdom of France, and the said Robert Jenkins Macy, (therein described as) a citizen of the United States of America, residing in the rue Saint Marc, No. 12, in Paris aforesaid, mariner, of the third part, it was recited that the said Stephen Jumel had proposed and agreed to settle and assure

175 certain houses and premises in the said city of New York unto and for the use and benefit of his wife, the said Eliza Brown Jumel; thereupon, in order to carry said proposal and agreement into effect, the said indenture witnesseth, that in pursuance of the aforesaid proposal and agreement, and for and in consideration of the sum of one dollar to him the said Stephen Jumel in hand well and truly paid by the said Robert Jenkins Macy, he, the said Stephen Jumel, had granted, bargained, sold, assigned, and made over, and by the said indenture did grant, bargain, sell, assign, and make over, unto the said Robert Jenkins Macy, his executors, administrators, and assigns, certain messuages and premises in the said indenture described, (and which are hereinafter particularly set forth,) to have and to hold the said messuages and premises unto the said Robert Jenkins Macy, his executors, administrators, and assigns, for and during the natural life of the said Eliza Brown Jumel, upon trust, nevertheless, to permit and suffer the rents, issues, and profits of the said messuages and premises to be taken and received by the

176 person who at the date of said indenture was in receipt of the same until otherwise directed under the hand of the said Eliza Brown Jumel, under the power in the said indenture thereinafter contained, such receipts, however, to be for the use and benefit of the said Eliza Brown Jumel and her assignee absolutely separate and apart from the

influence, control, or management of her said husband, and not to be subject or liable to his debts, contracts, or engagements, and to be remitted or paid to her or them accordingly, and her receipt alone should be a good and sufficient discharge for the same; and in and by said indenture it was further provided that it should and might be lawful for the said Eliza Brown Jumel at any time or times thereafter during her natural life, by any instrument or instruments under her hand, to remove and replace the (then) present receiver of rents and profits of the said premises and another or others to appoint in his place and stead, and such new receiver or receivers again to remove and replace and other or others to appoint as often as she should think it necessary; and in and by said indenture it was further provided that in case the said Robert Jenkins Macy should at any time during the natural life of the said Eliza Brown Jumel, die or desire to quit and be dis-
177 charged of and from the aforesaid trusts, or in case the said Eliza Brown Jumel shall at any time thereafter think proper to appoint any other person or persons as a trustee or trustees in the place of the said Robert Jenkins Macy, it should and might be lawful for the said Eliza Brown Jumel, by any writing or writings under her hand and seal, attested by one or more credible witnesses, to appoint any other person or persons in his place or stead, and that such person or persons so to be from time to time appointed by the said Eliza Brown Jumel should have the like power and authority as the trustee appointed in and the said indenture, as in and by said last-mentioned indenture, recorded in the office of register in and for the city and county of New York, in liber 201 of conveyances, page 172, will, together with other provisions in the said indenture contained, more fully and at large appear; and whereas the said party of the fourth part hath contracted and agreed with the said Eliza Brown Jumel, party of the third part, and also with the said Stephen Jumel, party of the second part, for the absolute purchase of their respective right and interest is said messuages and premises so as to vest in her, the said party of the fourth part, an absolute estate
178 in fee-simple in said messuages and premises, subject only to the mortgage hereinafter particularly mentioned at and for the considerations hereinafter expressed; and whereas the said parties of the second and third parts have requested, and the said Eliza Brown Jumel particularly by these presents doth request, the said Robert Jenkins Macy, party of the first part, to assign, transfer, and set over all his right, title, and interest in said messuage and premises by virtue of the said indenture hereinbefore mentioned and referred to: Now this indenture witnesseth that the said party of the first part, in consideration of the premises, and also of the sum of one dollar' to him in hand paid before the ensealing of these presents, the receipt where' is hereby acknowledged, hath bargained, sold, released, assigned, and set over, and by these presents doth bargain, sell, release, assign, and set over, unto the said party of the fourth part, and to her heirs and assigns, all and singular the messuages and premises conveyed to him, the said party of the first part, in and by the said indenture hereinbefore in part recited and referred to, and all the interest, right, title, demand, and claim,
179 of every kind whatever, of him the said party of the first part therein, which said messuage and premises are hereinafter more particularly described: To have and to hold the same messuages and premises to her, the said party of the fourth part, and to her heirs and assigns forever. And this indenture further witnesseth that the said Eliza Brown Jumel, by this instrument, under her hand and seal, attested by two witnesses, in consideration of the sum of ten thousand

dollars, to her in hand paid before the ensealing of these presents, the receipt whereof is hereby acknowledged, doth irrevocably direct, limit, and appoint that the said messuages and premises comprised in the said indenture hereinbefore in part recited and referred to, and hereinafter more particularly described, shall go and remain, and that said indenture hereinbefore in part recited and referred to shall operate and enure, to the sole use, benefit, and behoof of the said party of the fourth part, her heirs and assigns. And she, the said Eliza Brown Jumel, by this her said instrument, under her hand and seal, doth assign, transfer, release, and convey to the said party of the fourth part, and her heirs and assigns, all her estate, right, title, interest, use,
180 trust, property, benefit, claim, and demand whatever, in, to, and upon the said messuages and premises, to have and to hold the same to the said party of the fourth part, her heirs and assigns, forever. And this indenture further witnesseth that the said Stephen Jumel, party of the second part, and the said Eliza Brown Jumel, party of the third part, in consideration of the sum of ($20,000) twenty thousand dollars, to them in hand paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, and confirmed, and by these presents do grant, bargain, sell, alien, release, and confirm unto the said party of the fourth part, and her heirs, all that certain piece or parcel of land situate in the second ward of the city of New York, and which was conveyed to the said Stephen Jumel by Daniel Ludlow and Rem. P. Remsen, late of the city of New York, merchants, surviving trustees of the estate of the late David Provost, of the city of New York, deceased, by an indenture bearing date the first day of May, in the year of our Lord one thousand eight hundred and twelve, and recorded in the
181 office of the register in and for the city and county of New York, in liber No. 97 of conveyances, &c., page 394, on the sixth day of May, one thousand eight hundred and twelve, at half past eleven o'clock a. m., and which said piece or parcel of land is described in and by said indenture as follows: All that certain messuage and premises situate at the corner of Broadway and Liberty street, in the city of New York, being part of the said real estate whereof the said David Provost died seized, and is described in a conveyance thereof to the said David Provost from James Duncan and Elizabeth, his wife, bearing date the thirtieth day of May, 1758, by all that certain corner dwelling-house, store-house, and lot of ground thereunto belonging, situate and being on the east side of Broadway, in the city of New York, containing in breadth in front twenty-six foot, or thereabouts, be it more or less, and in the rear twenty-five foot, more or less, and in length on both sides one hundred and ten foot, more or less; bounded in front west by the Broadway, east by the ground of the heirs of William Le Count, deceased, or their assigns, south by Crown or Duke
182 street, being on the north side thereof and north by the house and ground now or late in the possession of Richard Tripp Cooper, which heretofore belonged to one Lieutenant Buckley, deceased, together with one-half of the wall of a house late of the said Buckley, as also a passage-way or alley from the nearest part of the lot thereby granted of four feet in breadth and in the rear of the said lot, which formerly was a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture, lease, and release, bearing date the first and second days of November, 1747, together with all and singular the tenements, hereditaments, and appurtenances to the same belonging or in any wise appertaining, and the reversion or reversions, remainder or remainders, rents, issues, and profits

thereof, as by the said indenture, reference being the'unto had, will more fully and at larg' appear. And als› all that other piece or parcel of land situate in the ward of the said city of New York, and
183 which, as conveyed to the said Stephen Jumel by Mary Haight, John E. Haight, Benjamin Haight, and Halstead E. Haight, executors of the last will and testament of Benjamin Haight, late of the city of New York, in the State of New York, saddler, deceased, by an indenture bearing date the thirty-first day of May, in the year of our Lord one thousand eight hundred and thirteen, and which said last-mentioned piece or parcel of land is described in said last-mentioned indenture as follows: All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground and ruuning thence southerly twenty-three feet, or thereabouts, thence westerly twenty feet, thence northerly fifteen feet or thereabouts, thence easterly six feet, thence northerly eight feet, thence easterly fourteen feet to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie; southerly by ground now or late belonging to the said Stephen Jumel; westerly by ground belonging to the heirs of the said testator, and northerly partly by ground belonging to the said heirs
184 of the said testator and partly by ground now or late belonging to the heirs of one Richard Kip, deceased, as by the annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear, together with all and singular the tenements, hereditaments, and appurtenances whatsoever unto the said above mentioned and described premises in any wise appertaining or belonging, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, and interest, dower, and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the second and third parts, of, in, and to the same and every part and parcel thereof, with the appurtenances, to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the fourth part, her heirs and assigns, to her and their own proper use, benefit, and behoof forever; and the said Stephen Jumel, and his *his* heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the
185 said party of the fourth part and her heirs, and against all and every person and persons lawfully claiming and to claim the same shall and will warrant and by these presents forever defend.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written. It is further declared and understood by the parties to these presents, prior to the sealing and delivery thereof, that this indenture is subject to a certain mortgage on said premises hereby conveyed or part thereof to Eloy Berger, doctor in medicine, for the sum of six thousand dollars, and to all interest due and to grow due thereon, and to all rights and privileges of the said mortgage, and that the covenants herein contained, and particularly the preceding covenants of warranty, are not to cover or apply to or extend to said mortgage, but that said mortgage is excepted from their operation.

R. J. MACY. [L. S.]
STEPHEN JUMEL, [L. S.]
By his attorney ELIZA B. JUMEL.
ELIZA B. JUMEL. [L. S.]

Sealed and delivered in the presence of—
JAS. M. CUMMINGS.

186 CITY AND COUNTY OF NEW YORK, *ss:*

On this twenty-fourth day of November, in the year one thousand eight hundred and twenty-seven, personally appeared before me the within-named Robert J. Macy, to me known to be the person described in and who executed the foregoing indenture, and to me acknowledged the same as his act and deed for the uses and purposes therein mentioned; and on the same day and year personally appeared before me the within-named Eliza Brown Jumel, to me known to be the person described in a certain letter of attorney, dated the fifteenth day of May, in the year one thousand eight hundred and twenty-six, and recorded in the office of register in and for the city and county of New York, in lib. No. 2 of power of attorney, page 88, executed by Stephen Jumel, late of New York; and thereupon she, the said Eliza, acknowledged the said indenture as the attorney of the said Stephen Jumel, to be the act and deed of the said Stephen Jumel; and the said Eliza, as the wife of the said Stephen Jumel, on a private examination sepa-
187 rate and apart from her said husband, acknowledged said indenture as her own act and deed, and that she had executed the same freely, without any fear or compulsion of her said husband.

Whereupon I allow said indenture to be recorded, the said Eliza being known to me to be the person described in and who executed said indenture.

WILLIAM KENT,
Commissioner to take acknowledgment of Deeds, &c.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 28th day of November, A. D. 1827, at 2 o'clock 30 min. p. m., in lib. 228 of conveyances, page 109, and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 21st day of November, 1872.

F. SIGEL,
Register.

188 Also a certified copy of a deed from Mary Haight and others, executors, to Stephen Jumel, bearing date the 31st May, 1813, recorded in the office of the register of the city and county of New York on the 31st January, 1867, in liber 993 of conveyances, page 366; conveying unto the said Stephen Jumel, in fee-simple, the lot in Liberty street, New York, mentioned in said declaration.

189 The complainant's counsel gives in evidence, at the request of defendant's counsel, and as on the part of the defendants, certain deeds to a d from Francis Phillipon, found in the said bill of exceptions, between pages 88 and 112; and which were as follows:

190 This indenture, made the twentieth day of August, in the year of our Lord one thousand eight hundred and forty-two, between Eliza B. Jumel, of the city of New York, widow of Stephen Jumel, late of said city, merchant, of the first part, and Michael Werckmeister, of said city, merchant, of the second part, and Francis Philippon, also of said city, merchant, of the third part, witnesseth: Whereas Mary Jumel Bownes, of the city of New York, (now the wife of Nelson Chase, esquire, attorney at law,) by certain indentures, duly made and executed, did heretofore grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm unto the party of the second part, and to his heirs and as-

signs, forever, the lands and premises hereinafter described, to have and to hold the same and every part and parcel thereof to him, his heirs and assigns, forever in trust. Nevertheless, amongst other things, that the party of the second part, or his heirs, lease, demise, let, convey, assure, and dispose of all and singular the said premises with their and every of their appurtenances to such person or persons for such term or terms, on such rent or rents, for such price or prices, at such time or
191 times, to such uses, intents, and purposes, and in such manner and form as she, the said Eliza Brown Jumel, (party to the first part to this indenture,) notwithstanding her present or any future coverture, as if she were a feme sole, shall, by any instrument in writing, executed in the presence of any two credible witnesses, order, direct, limit, or appoint, and in case of an absolute sale of said premises, or any part thereof, to pay over the purchase-money to the said Eliza Brown Jumel, or invest the same as she shall order and direct, as by the said indenture or the record thereof in the office of the register of the city and county of New York will more fully and at large appear; and whereas the said party of the third part hath contracted and agreed with the said party of the first part for the absolute purchase of all the said lands and premises hereinafter particularly described, (being the lands and premises conveyed to the said party of the second part in trust by the deed above referred to,) with their appurtenances, in fee-simple, for the sum of one hundred thousand dollars, lawful money of the State of New York. Now, therefore, this indenture witnesseth that the said
192 party of the first part, in consideration of the premises and the sum of one hundred thousand dollars to her in hand paid by the said party of the third part, the receipt whereof is hereby acknowledged, pursuant to and in execution of the power and authority reserved, vested, and given to and in her by the indenture hereinbefore mentioned and by force and virtue thereof, and of all and every other power and authority to her in that behalf reserved or her in anywise thereunto enabling, hath ordered, directed, limited, and appointed, and by this instrument, in writing, under her hand and seal and by her duly executed, signed, sealed, and delivered in the presence of two credible witnesses, who have hereunto set and subscribed their names as witnesses hereto, doth absolutely and irrevocably order, direct, limit, and appoint that the said party of the second part by these presents convey, assure, and dispose of the said premises hereinafter described, to the said party of the third part, in manner and form and for the price herein expressed and contained. And the said party of the second part, in consideration of the premises and of one dollar to him in hand paid by the said party of the third part, at and before the ensealing and delivery
193 of these presents, the receipt whereof is hereby acknowledged, and in pursuance of the order, direction, limitation, and appointment herein contained, hath granted, bargained, sold, remised, released, conveyed, assured, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, remise, release, convey, assure, enfeoff, and confirm unto the said party of the third part, and to his heirs and assigns forever, all those certain lots, pieces, or parcels of land and premises situate lying and being in the city and county of New York and bounded and described as follows, to wit: All those certain lots, pieces, and parcels of land and premises, situate, lying, and being at Harlem Heights, in the Twelfth ward of the city of New York, bounded as follows, to wit: Beginning at the northwest corner of the Albany post-road, at the land now or late of Mrs. Bauer, and thence running along the said road south fifteen degrees west one hundred and ninety-one

feet, south eight degrees thirty minutes west two hundred and eighty-six feet, south ten degrees fifteen minutes west two hundred and seventy feet, south five degrees west five hundred feet, thence south twelve degrees forty-five minutes west two hundred and
194 sixty-four feet, south ten degrees west three hundred and thirty-two feet, south twenty-three degrees fifteen minutes west three hundred feet, south seventeen degrees ten minutes west one hundred and forty-one feet, south five degrees thirty-five minutes west one hundred eighty feet, thence south forty-nine degrees east five hundred sixty-five feet, south forty-nine degrees east one hundred eighteen feet, south forty-five degrees thirty minutes east two hundred eighty-five feet, south forty-seven degrees thirty minutes east ninety-seven feet, south forty-seven degrees forty-five minutes five hundred feet to Harlem River, thence northerly along the said river to the lands of the said Mrs. Bauer, thence north forty-eight degrees west nine hundred and fifty feet, north fifty-one degrees west one thousand five hundred and twenty feet to the post-road and place of beginning, containing ninety-four acres three rods twenty perches; and bounded on the north by lands now or late of the said Mrs. Bauer, on the west by the Albany post-road, on the south by the land now or late of George Wear, and on the east by Harlem River, being in all nine lots and numbered six,
195 seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situated at Harlem, on the first day of March, one thousand eight hundred and ten, as, reference being thereunto had, will fully appear; also all that certain lot, piece, or parcel of land situate, lying, and being at Harlem Heights, in the Twelfth (late Ninth) ward of the city of New York, on the westerly side of the Kingsbridge road, bounded easterly by the Kings bridge road, northerly by land now or late belonging to Joseph Havens, westerly by the Hudson River and the Fourteenth avenue as laid out in the general plan of the said city of New York, and southerly by land now or lately belonging to Hannah Murray, containing forty acres, be the same more or less, particularly described on a certain map of said tract of land laid out into lots on the intersecting avenues and streets made by D. Ewen, city surveyor, dated New York, January, 1835, enlarged from a survey made by John Randall, junior, and filed in the street-commissioner's office in the city of New York; also all that certain other piece or parcel of land situated in the Second ward of the city of New York and
196 which was conveyed to Stephen Jumel by David Ludlow and Rem. P. Remsen, late of the city of New York, surviving trustees of the estate of the late David Provost, of the city of New York, deceased, by an indenture bearing date the first day of May, A. D. 1812, and recorded in the office of register in and for the city and county of New York, in lib. No. 97 of conveyances &c., page 394, and which said piece or parcel of land is described in said indenture as follows:

All that certain messuage and premises situate at the corner of Broadway and Liberty street in the city of New York, being part of the said real estate whereof the said David Provost died seized, and is described in a conveyance thereof to the said David Provost from James Duncan and Elizabeth, his wife, bearing date the thirtieth day of May, 1758, by all that certain corner dwelling-house, store-house, and lot of ground thereunto belonging, situate and being on the east side of the Broadway, in the city of New York, containing in breadth, in front, twenty-six feet or thereabouts, be it more or less, and in the rear twenty-five feet, more or less, and in length of both sides one hundred and ten feet, more

197 or less, bounded in front, west by the Broadway, east by the ground of the heirs of William DeCount, deceased, or their assigns, south by Crown or Duke street, being on the north side thereof, and north by the house and ground now or late in the possession of Richard Tripp Cooper, which heretofore belonged to one Lieutenant Buckley, deceased, together with one-half of the wall of the house late of the said Buckley, as also a passage-way or alley from the nearest part of the lot thereby granted, of four feet in breadth and is in the rear of the said lot, which formerly was a passage-way leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture of lease and release bearing date the first and second days of November, 1747, as by reference to said indenture will more and at large appear, and also all that certain other piece or parcel of land situate in the Second ward of the city of New York, and which was conveyed to Stephen Jumel by Mary Haight, John E. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, late of the city of New York, in the State of New York, saddler, deceased, by an
198 indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned piece or parcel of land is described in said last-mentioned indenture as follows: all that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of said ground, running thence southerly twenty-three feet or thereabouts, thence westerly twenty feet, thence northerly fifteen feet or thereabouts, thence easterly six feet, thence northerly eight feet, thence easterly fourteen feet to the place of beginning; and bounded easterly by ground now or lately belonging to one Peter Ogilvie, southerly by ground now or lately belonging to the said Stephen Jumel, west by ground belonging to the heirs of the said testator, and northerly partly by ground now or late belonging to the heirs of one Richard Kip, deceased, as by the annexed map, (meaning the map annexed to the said last-mentioned indenture,) will more fully appear; which said last-mentioned and described premises are now known as numbers 71 & 73 Liberty street, in the city
199 of New York, together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the right, title, and interest, claim, and demand of the said party of the second part of, in, and to the said premises; to have and to hold the same with the appurtenances to the said party of the third part and to his heirs and assigns in fee-simple forever. And the said Michael Werkmeister, party of the second part, doth for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the third part, his heirs and assigns, that the said lands and tenements now are and from thenceforth shall continue, remain, and be unto the said party of the third part, his heirs and assigns, free and clear, and freely and clearly acquitted and discharged of and from all former and other grants, charges, and incumbrances made, suffered, or committed by him or any other person lawfully claiming or to claim by, from, or under him; and the said Eliza B. Jumel, party of the first part, for myself and my heirs, do hereby covenant and agree to and
200 with the said party of the third part, and his heirs and assigns, that the said party of the second part is lawfully seized of a good, indefeasible estate of inheritance in the said premises, and has full right and power to sell and convey the same in fee-simple absolute. That the said premises are free and clear of all encumbrances; that the said party of the third part may forever hereafter have, hold, possess, and enjoy

the same without any suit, molestation, or interruption by any person whatever claiming any lawful right therein. And that the said parties of the first and second, and all persons claiming under them or either of them, will at any time hereafter, at the reasonable request and expense of the said party of the third part, his heirs, or assigns, make all and such further assurances for the more efficient and effectual conveying the said premises with the appurtenances as may be reasonably required by him or them. And that the said party of the first part will warrant and defend the said premises with the appurtenances unto the said party of the third part and his heirs and assigns forever.

201 In witness whereof we have hereunto set our hands and seals the day and year first above written.

ELIZA B. JUMEL. [L. S.]
M. WERCKMEISTER. [L. S.]

C. G. A. HINNICHS.
ABNER COOK, JUNR.

STATE OF NEW YORK,
City and County of New York, ss:

On the 22d day of August, 1842, before me came Abner Cook, junr., the subscribing witness to the foregoing conveyance, to me known, and being by me duly sworn, said that he resided at No. 65 Bank street, in the city of New York; that he saw Eliza B. Jumel and Michael Werckmeister execute the said conveyance; that he knew them to be the individuals described in and who executed the same, and that he, said Cook, became the subscribing witness thereto; which is to me satisfactory evidence of the due execution thereof.

JOHN S. WOODWARD,
Comm'r of Deeds, &c.

O F THE REGISTER OF DEEDS, &C.

202 CITY AND COUNTY OF NEW YORK:

I have compared the annexed copy with an instrument recorded in this office on the 27th day of August, A. D. 1842, at 10 o'clock 30 min. a. m., in liber 427 of conveyances, page 459, and certify the same to be a correct transcript therefrom and of the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 23d day of November, 1872.

F. SIGEL,
Register.

203 Also a deed from Francis Phillippon to Eliza B. Jumel, which deed was in the words and figures following:

204 This indenture, made this twentieth day of August, in the year of our Lord one thousand eight hundred and forty two, between Francis Philippen, of the city of New York, of the first part, and Eliza B. Jumel, of e said city, widow of the late Stephen Jumel, of said city, merchant, of e second part, witnesseth, that the said party of the first part, for and in consideration of one dollar to him in hand paid by the said Eliza B. Jumel, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm unto the said Eliza B. Jumel, and to her heirs and assigns forever, all those certain lots, pieces and parcels of land and premises, situate, lying, and being at Harlem Heights, in the Twelfth ward of the city of New York, bounded as follows, to wit:

Beginning at the northwest corner of the Albany post-road at the land now or late of Mrs. Bauer, and thence running along said road
205 south fifteen degrees west one hundred and ninety-one feet, south eight degrees thirty minutes west two hundred and eighty-six feet, south ten degrees fifteen minutes west two hundred and seventy feet, south five degrees west five hundred feet; thence south twelve degrees forty-five minutes west two hundred and sixty-four feet, south ten degrees west three hundred thirty-two feet, south twenty-three degrees fifteen minutes west three hundred feet, south seventeen degrees ten minutes west one hundred forty-one feet, south five degrees thirty-five minutes west one hundred and eighty feet; thence south forty-nine degrees east five hundred sixty-five feet, south forty-nine degrees east one hundred eighteen feet, south forty-five degrees thirty minutes east two hundrd eighty-five feet, south forty-seven degrees thirty minutes east ninety-seven feet, south forty-seven degrees forty-five minutes, five hundred and twenty feet to Harlem River; thence northerly along the said river to the lands of the said Mrs. Bauer; thence north forty-eight degrees west nine hundred and fifty feet, north fifty-
206 one degrees west one thousand five hundred and twenty feet, to the post-road and place of beginning, containing ninety-four acres three roods and twenty perches, and bounded on the north by land now or late of the said Mrs. Bauer, on the west by the Albany post-road, on the south by the land now or late of George Wear, and on the east by Harlem River, being, in all, nine lots, and numbered six, seven, nine, ten, eleven, twelve, thirteen, and fifteen, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situated at Harlem, on the first day of March, one thousand eight hundred and ten, as, reference being thereunto had, will fully appear; and also all that certain lot, piece, or parcel of land situate, lying, and being at Harlem Heights, in the Twelfth (late Ninth) ward of the city of New York, on the westerly side of Kingsbridge road; northerly by land now or lately belonging to Joseph W. Havens; westerly by the Hudson River and Fourteenth avenue, as laid out in the ground-plan of the said city of New York, and southerly by land
207 now or lately belonging to Hannah Murray, containing forty acres, be the same more or less, particularly described on a certain map of said tract of land laid out into lots on the intersecting avenues and streets, made by D. Ewen, city surveyor, dated New York, January, 1835, enlarged from a survey made by John Randall, jr., and filed in the street-commissioner's office in the city of New York; also, all that certain other piece or parcel of land situate in the Second ward of the city of New York, and which was conveyed to Stephen Jumel by Daniel Ludlow and Rem P. Remsen, late of the city of New York, merchants, surviving trustees of the estate of the late David Provost, of the city of New York, deceased, by an indenture bearing date the first day of May, A. D. 1812, and recorded in the office of register in and for the city and county of New York, in liber No. 97 of conveyances, page 394, and which said piece or parcel of land is described in said indenture as follows: All that certain messuage and premises situate at the corner of Broadway and Liberty street, in the city of New York, being part
208 of the said real estate whereof the said David Provost died seized, and is described in a conveyance thereof to the said David Provost from James Duncan and Elizabeth, his wife, bearing date the thirtieth day of May, 1758.

By all that certain corner dwelling-house, store-house, and lot of ground thereunto belonging, situate and being on the east side of

Broadway, in the city of New York, containing in breadth, in front, twenty-six feet or thereabouts, be it more or less, and in the rear twenty-five feet, more or less, and in length on both sides one hundred and ten feet, more or less.

Bounded in front, west by the Broadway; east by the ground of the heirs of William De Count, deceased, or their assigns; south by Crown or Duke street, being on the north side thereof, and north by the house and ground now or late in the possession of Richard Tripp Cooper, which heretofore belonged to one Lieutenant Bulkley, deceased, together with one-half of the wall of the house late of the said Bulkley, as also a passage-way or alley from the nearest part of the lot thereby
209 granted, of four feet in breadth, and is in the rear of the said lot, which formerly was a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture of lease and release bearing date the first and second days of November, 1747, as by the said indenture, reference being thereunto had, will more fully and at large appear; and also all that certain other piece or parcel of land situate in the Second ward of the said city of New York, and which was conveyed to the said Stephen Jumel by Mary Haight, John E. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, late of the city of New York, saddler, deceased, by an indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned indenture as follows: All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground, and running thence southerly twenty-three feet or thereabouts; thence west-
210 erly twenty feet, thence northerly fifteen feet or thereabouts, thence easterly six feet, thence northerly eight feet, thence easterly fourteen feet to the place of beginning, and bounded easterly by ground now or late belonging one Peter Ogilvie, southerly by ground now or late belonging to the said Stephen Jumel, westerly by ground belonging to the heirs of the said testator, and northerly partly by ground belonging to the heirs of the said testator and partly by ground now or late belonging to the heirs of one Richard Kip, deceased, as by the annexed maps (meaning the maps annexed to the said last mentioned indenture) will more fully appear. The said last mentioned and described premises are now known as numbers 71 and 73 Liberty street, in the city of New York; together with all and singular hereditaments and appurtenances whatsoever thereunto belonging, or in any way *was* appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and every part and parcel thereof, and also all the estate, right, title, interest, trust, property, claim,
211 and demand whatsoever, both at law and in equity, of the said party of the first part, in, to, or out of the said lands, tenements, and hereditaments, and all and singular other the premises hereinbefore mentioned, with the appurtenances, unto the said Eliza B. Jumel, her heirs and assigns, and to his and their only proper use and behoof; and the said party of the first part doth for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the second part, her heirs, executors, administrators, and assigns, in manner and form following, that is to say, that the said Eliza B. Jumel, her heirs and assigns, shall and may peaceably and quietly have, hold, and enjoy the said lands, tenements, hereditaments, and premises, and every part and parcel thereof, without the let, suit, trouble, eviction, or disturbance of the said Francis Philippon, his heirs or assigns, or of or by

any other person or persons lawfully claiming or to claim the same from, by, or under, or in trust for him, them, or any of them, and that
212 the said lands, tenements, hereditaments, and premises, and every part and parcel thereof, now are and from henceforth shall continue and remain, and be unto the said Eliza B. Jumel, her heirs and assigns, free and clear, and freely and clearly acquitted, exonerated, and discharged of, from, and against all former and other gifts, grants, bargains, sales, mortgages, estate, titles, troubles, charges, and incumbrances whatsoever, made, done, committed, occasioned, or suffered by the said Francis Philippon, or by any person lawfully claiming or to claim by, from, or under him, or by his, their, or any of their acts, means, assent, or procurement; and the said Francis Philippon, and his heirs, all and singular the aforesaid lands, tenements, hereditaments, and premises, and every part and parcel thereof, unto the said Eliza B. Jumel, her heirs and assigns, shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

F. PHILIPPON. [L. S.]

In the presence of—the words "ten degrees fifteen" on 1st page
213 written over an erasure, and "to the" on 2nd page "and" erased, —and "1842" on 3d page erased, and "1812" on same page interlined, "and" on 6th page erased before execution.

ABNER COOK, JR., 65 *Wall Street.*

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On the 22d of August, 1842, before me came Abner Cook, junior, the subscribing witness to the foregoing conveyance, to me known, and, being by me duly sworn, deposed that he resided at No. 65 Bank street, in the city of New York; that he saw Francis Philippon execute the said conveyance; that he knew him to be the individual described in and who executed the same, and that the said Cook became the subscribing witness thereto; which is satisfactory evidence to me of the due execution thereof.

JNO. S. WOODWARD,
Comr. of Deeds.

Recorded the preceding at the request of Mr. Cook, Aug. 27, 1842, at 30 minutes past 10 a. m.

J. S. BROWNELL, *Reg.*

214 The complainants' counsel then put in evidence, at the request of the defendant's counsel, and as on the part of the defendant, from the aforesaid bill of exceptions, certain deeds to and from Hamilton, contained between pages 51 and 87 of the said bill, and which were as follows:

215 This indenture, made the tenth day of January, in the year of our Lord one thousand eight hundred and thirty-four, between Michael Werckmeister, of the city of New York, merchant, of the first part, and Eliza B. Burr, the wife of Aaron Burr, (late Eliza B. Jumel,) of the same city, of the second part: Whereas Mary Jumel Bownes, of the city of New York, by certain indentures duly made and executed, did heretofore grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm unto the said party of the first part, and to his heirs and assigns forever, certain lands and premises situated at Harlem Heights,

in the said city of New York, of which the premises hereinafter described are part and parcel, to have and to hold the same and every part and parcel thereof with the appurtenances unto him, the said party of the first part, his heirs and assigns forever, in trust, that he the said party of the first part, and his heirs, should collect and receive the *the* rents, issues, and profits of said premises, and every part and parcel thereof, and pay over the same unto the said party of the second
216 part, (then Eliza Brown Jumel, the wife of Stephen Jumel,) or, at her election, suffer and permit her, the said party of the second part, to use, occupy, and possess the said premises, and to have, take, collect, receive, and enjoy the rents, issues, and profits thereof, to and for her own separate use and benefit, and to and for such other uses and purposes as the said party of the second part should please and think fit, at her own free will and pleasure, and not subject to the control or interference of her then present or any future husband, and that the receipt or receipts of her, the said party of the second part, should at all times be good and sufficient discharges for such payments, and for such rents and profits, to the said party of the first part, his heirs, executors, and administrators, and to the person or persons who were or should be liable to pay the same. And upon this further trust, that the said party of the first part, or his heirs, should lease, demise, let, convey, assume, and dispose of all and singular the said premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on such rent or rents, for such price or prices,
217 at such time or times, for such uses, intents, and purposes, and in such manner and form as she, the said party of the second part, notwithstanding her then present or any future coverture, as if she were a feme sole, should by any instrument in writing, executed in the presence of any two credible witnesses, order, direct, limit, or appoint, and in case of an absolute sale thereof, or any part thereof, to pay over the purchase-money to the said party of second part, or invest the same as she should order and direct, as on reference to the said indentures or the record thereof, in the office of register in and for the city and county of New York, will among other things particularly appear. And whereas the said party of the second part hath bargained and sold a part of the said premises so conveyed to the said party of the first part in trust as aforesaid, and described as follows: All those certain lots, pieces, and parcels of land and premises situate, lying, and being at Harlem Heights, in the Twelfth ward of the city of New York, and bounded as follows, to wit: Beginning at the northwest corner on the Al-
218 bany post-road, at the land now or late of Mrs. Bauer; and thence running along the said road south fifteen degrees west one hundred and ninety-one feet, south eight degrees thirty minutes west two hundred and eighty-six feet, south ten degrees fifteen minutes west two hundred and seventy feet, south five degrees west five hundred feet; thence south twelve degrees forty-five minutes west two hundred and sixty-four feet, south ten degrees west three hundred and thirty-two feet, south twenty-three degrees fifteen minutes west three hundred feet, south seventeen degrees ten minutes west one hundred and forty-one feet, south five degrees thirty-five minutes west one hundred eighty feet; thence south forty-nine degrees east five hundred sixty-five feet, south forty-nine degrees east one hundred eighteen feet, south forty-five degrees thirty minutes east two hundred eighty-five feet, south forty-seven degrees thirty minutes east ninety-seven feet, south forty-seven degrees forty-five minutes five hundred and twenty feet, to Harlem River; thence northerly along the said

river to the lands of the said Mrs. Bauer; thence north forty
219 eight degrees west nine hundred and fifty feet, north fifty-one degrees west one thousand five hundred and twenty feet to the post-road and place of beginning, containing ninety-four acres three roods and twenty perches, and bounded on the north by land now or late of the said Mrs. Bauer, on the west by the Albany post-road, on the south by the land now or late of George Wear, and on the east by Harlem River, being in all nine lots, and numbered six, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esqr., situated at Harlem, on the first day of March, one thousand eight hundred and ten, as reference being thereunto had will fully appear, to Alexander Hamilton, of the city of New York, for the price or consideration of fifteen thousand dollars, and by indenture, of even date herewith, executed in presence of two credible witnesses, hath directed, limited, and appointed the conveyance thereof by the
220 said party of the first part to the said Alexander Hamilton, and his heirs and assigns, in fee-simple; and he, the said party of the first part, in pursuance of the said trust, and of such direction, limitation, and appointment, hath, by the said indenture last mentioned, granted, bargained, and sold, aliened, remised, released, conveyed, and confirmed, unto the said Alexander Hamilton, and to his heirs and assigns forever, in fee-simple, the said premises last mentioned and described. And whereas it has been agreed by and between the said party of the second part and the said Alexander Hamilton that to secure the payment of the sum of twelve thousand dollars, part of the consideration for the said last-mentioned premises, he, the said Alexander Hamilton, shall make and execute to the said party of the first part his personal bond, in the penal sum of twenty-four thousand dollars, conditioned for the payment of the said sum of twelve thousand dollars on or before the tenth day of January next, with interest, at and after the rate of six per cent. per annum, payable half-yearly; and also, together
221 with Eliza B., his wife, shall make and execute to the said party of the first part an indenture of mortgage, collateral to said bond, of and upon the same premises last mentioned.

Now, therefore, these presents witness that the said party of the second part, in consideration of the premises, and pursuant to, and in exercise of, the power and authority reserved, given, and vested to and in her by the said indentures made and executed by the said Mary Jumel Bownes, hereinbefore mentioned, and by force and virtue thereof, and of all and every other power and authority to her in that behalf reserved, or her in anywise thereunto enabling, by this instrument in writing, under her hand and seal, and by her duly executed, signed, sealed, and delivered in the presence of, and attested by, the two credible witnesses who have hereunto set and subscribed their names, doth absolutely and irrevocably order, direct, limit, and appoint that the said party of the first part convey, assure, and dispose of the said premises to the said Alexander Hamilton in manner and form and for the consideration aforesaid; and that, as security for the payment of
222 the sum of twelve thousand dollars, part of such consideration, he, the said party of the first part, receive and take from the said Alexander Hamilton his personal bond in the penal sum of twenty-four thousand dollars, conditioned for the payment of the said sum of twelve thousand dollars, on or before the tenth day of January next, with interest at and after the rate of six per cent. per annum, payable half-yearly; and also an indenture of mortgage collateral to said bond, to be made

and executed by the said Alexander Hamilton, and Eliza B., his wife, of and upon the same premises above described, and that he, the said party of the first part, receive, take, and hold the said bond and indenture of mortgage upon the same trusts and to and for the same uses, intents, and purposes as the said premises were received and held by him under the said indentures or conveyances from the said Mary Jumel Bownes, and to and for and upon no other use, trust, intent, or purpose whatsoever. And the said party of the first part doth hereby acknowledge and declare that the said sum of twelve thousand dollars and the said bond and mortgage or to be given
223 to secure the payment thereof are the proper moneys and property of the said party of the second part, arising from the sale of the said premises as aforesaid, and as and for part of the considerations therefor, and that the name of him, the said party of the first part, was and is used in the said bond and mortgage in trust only, and to and for the sole and separate use and benefit of the said party of the second part, her heirs, executors, administrators, and assigns, not subject to the control or interference of her present or any future husband; and the said party of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said party of the second part, her heirs, executors, administrators, and assigns, that he, the said party of the first part, his heirs, executors, administrators, and assigns shall and will at all times hereafter have and hold, receive and take, and stand and be seized or possessed of, or interested in, the said bond and mortgage, and the moneys thereby secured and made payable, and the premises thereby conveyed, or intended so to be, and every part thereof, in trust to and for
224 the sole and separate use and benefit of the said party of the second part, not subject to the control or interference of her present or any future husband, or in any manner liable to or for his debts or engagements, and to and for such other uses and purposes as the said party of the second part shall please and think fit to direct and appoint at her own free will and pleasure, and not subject to the control or interference of her present or any future husband. And also that he, the said party of the first part, his heirs, executors, or administrators, shall not, nor will at any time hereafter, pay, assign, transfer, or otherwise dispose of the said bond and indenture of mortgage, or the moneys thereby secured, or any part thereof, to any person or persons whomsoever, except to the said party of the second part, or such other person or persons, and in such manner and form as she, the said party of the second part, notwithstanding her present or any future coverture, as if she were a feme sole, shall, by any instrument in writing execute in the presence of any two credible witnesses, order, direct, limit, or appoint.

225 In witness whereof the said parties have hereunto interchangeably set their hands and seals the day and year first above written.

M. WERCKMEISTER. [L. S.]
ELIZA BURR. [L. S.]

Signed, sealed, and delivered in presence of (the word "last" on the 4th page being interlined.)

B. W. BONNEY.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on the thirty-first day of January, 1834, before

me, Robert Giles, jr., a commissioner of deeds in and for the city and county of New York, personally appeared Eliza Burr and Michael Werckmeister, proven to me to be the individuals described in and who executed the foregoing conveyance, by Benjamin W. Bonney, of the city of New York, esqvire, the subscribing witness thereto, to me personally known, who, being by me duly sworn, did depose and say that he knew them to be such persons, and they severally acknowledged that they executed the same for the uses and purposes therein mentioned. And
the said Eliza Burr, being by me privately examined apart from
226 her husband, acknowledged that she executed the same freely and without any fear or compulsion of her said husband, there being therein no erasures or interlineations except as noted.

Let it be recorded.

ROBERT GILES, JR.,
Commissioner of Deeds.

Also a certified copy of a deed between Eliza B. Burr, of the first part, Michael Werckmeister, of the second part, and Alexander Hamilton, of the third part, bearing date the 10th January, 1834, recorded in the office of the register of the city and county of New York the 31' January, 1834, in liber 309 of conveyances, page 234, which deed was
in the words and figures following:

227 This indenture, made the tenth day of January, in the year of our Lord one thousand eight hundred and thirty-four, between Eliza B. Burr, the wife of Aaron Burr, (late Eliza B. Jumel,) of the city of New York, of the first part, Michael Werckmeister, of the same city, merchant, of the second part, and Alexander Hamilton, of the city of New York, esquire, of the third part: Whereas Mary Jumel Bownes, of the city of New York, by certain indentures duly made and executed, did heretofore grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, the land and premises hereinafter particularly described, (with others:) To have and to hold the same, and every part and parcel thereof, with the appurtenances, unto him, the said party of the second part, his heirs and assigns, forever, in trust, nevertheless, (among other things,) to lease, demise, let, convey, assume, and dispose of all and singular the said premises, with their and every of their appurtenances, to such person or persons, for such term or terms,
228 on such rent or rents, for such price or prices, at such time or times, to such uses, intents, and purposes, in such manner and form, as the said party of the first part, notwithstanding her (then) present coverture, as if she were a feme sole, should, by any instrument in writing executed in the presence of any two creditable witnesses, order, direct, limit, or appoint, as by the said indenture, or the record thereof in the office of register in and for the city and county of New York will, on reference, particularly appear; and whereas the said party of the third part hath contracted and agreed with the said party of the first part for the absolute purchase of the premises hereinafter particularly described, with the appurtenances, in fee-simple, at and for the price or sum of fifteen thousand dollars:

Now, therefore, this indenture witnesses that the said party of the first part, in consideration of the premises and of the sum of fifteen thousand dollars, lawful money of the United States of America, to her in hand paid by the said party of the third part, at or before the
ensealing and delivery of these presents, the receipt whereof
229 is hereby acknowledged, pursuant to and in exercise of the power and authority reserved, given, and vested to and in her by the

said indentures hereinbefore mentioned, and by force and virtue thereof, and of all and every other power and authority to her in that behalf reserved, or her in anywise thereunto enabling, hath ordered, directed, limited, and appointed, and by this instrument in writing, under her hand and seal, and by her duly executed, signed, sealed, and delivered, in the presence of and attested by the two credible witnesses who have hereunto set and subscribed their names as witnesses thereto, doth absolutely and irrevocably order, direct, limit, and appoint, that the said party of the second part by these presents convey, assure, and dispose of the said premises hereinafter described to the said party of the third part, in the manner and form and for the price herein expressed and contained; and the said party of the second part in consideration of the premises and of the sum of one dollar to him in hand paid by the said party of the third part at or before the ensealing and delivery of
230 these presents, the receipt whereof is hereby acknowledged, and in pursuance of the order, direction, limitation, and appointment herein contained, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the third part, and to his heirs and assigns forever, all those certain lots, pieces, and parcels of land and premises situate, lying and being at Haerlem Heights, in the Twelfth ward of the city of New York, and bounded as follows, to wit: Beginning at the northwest corner, on the Albany post-road, at the land now or late of Mrs. Bauer, and thence running along the said road south fifteen degrees west one hundred and ninety-one feet; south eight degrees thirty minutes west two hundred and eighty-six feet; south ten degrees fifteen minutes west two hundred and seventy feet; south five degrees west five hundred feet; thence south twelve degrees forty-five minutes west two hundred sixty-four feet; south ten degrees west three hundred thirty-two feet; south 23 degrees 15 minutes west three hundred feet; south seventeen
231 degrees ten minutes west one hundred forty-one feet; south five degrees thirty-five minutes west one hundred eighty feet; thence south forty-nine degrees east five hundred sixty-five feet; south forty-nine degrees east one hundred eighteen feet; south forty-five degrees thirty-five minutes east two hundred eighty-five feet; south forty-seven degrees thirty minutes east ninety-seven feet; south forty-seven degrees forty-five minutes five hundred twenty-five feet to Harlem River; thence northerly along the said river to the lands of the said Mrs. Bauer; thence north forty-eight degrees west nine hundred and fifty feet; north fifty-one degrees west one thousand five hundred and twenty feet to the post-road and place of beginning, containing ninety-four acres three roods and twenty perches, and bounded on the north by land now or late of the said Mrs. Bauer, on the west by the Albany post-road, on the south by the land now or late of George Wear, and on the east by Haerlem River, being in all nine lots, and numbered, six, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, according to a map
232 made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situated at Haerlem, on the first day of March, one thousand eight hundred and ten, as, reference being thereunto had, will fully appear: Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatso-

ever, as well in law as in equity, of him, the said party of the second part, of, in, and to the premises above described, and every part and parcel thereof, with the appurtenances: To have and to hold the said premises above granted and described, with the appurtenances, unto the said party of the third part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. And the said party of the second part for himself, his heirs, executors, and administrators, doth by these presents covenant, promise, and agree, to and with the said party of the third part, his heirs and assigns, that he, the said party of the second part, hath
233 not at any time heretofore made, done, executed, committed, or willingly or knowingly suffered, any act, deed, matter, or thing whatsoever whereby or by reason or means whereof, the said pieces or parcels of land and premises, with the appurtenances, hereby granted and conveyed, or any part thereof, is or are, or hereafter can, shall, or may be impeached, charged, incumbered, or in anywise affected or impaired in any manner or way whatsoever.

And the said party of the first part, for herself, her heirs, executors, and administrators, doth, by these presents, covenant, promise, and agree, to and with the said party of the third part, his heirs and assigns, that the said party of the second part, at the time of the sealing and delivery of these presents, is fully seized in trust, as aforesaid, of a good, absolute, and indefeasible estate of inheritence, in fee-simple, of and in all and singular the above granted and bargained and described premises, with the appurtenances, and hath good right,
234 full power and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the said party of the third part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first and second parts, or either of them, their or either of their heirs or assigns, or any other person or persons lawfully claiming or to claim the same; and the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances, of what nature or kind soever; and also that the said parties of the first and second parts, and their heirs, and all and every other person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore-granted premises, by, from, under, or in trust for them, or either of them, shall and will, at any time or times hereafter,
235 upon the reasonable request, and at the proper costs and charges in the law, of the said party of the third part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the third part, his heirs and assigns, forever, as by the said party of the third part, his heirs or assigns, or his their counsel learned in the law, shall be reasonably devised, advised, or required. And the said party of the first part, and her heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the third part, his heirs and assigns, against the said parties of the first and second parts, and their heirs, and against all and every person and

persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

236 In witness whereof the parties to these presents interchangeably set their hands and seals the day and year first above written.

ELIZA BURR. [L. S.]
M. WERCKMEISTER. [L. S.]

Sealed and delivered in the presence of—
B. W. BONNEY.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on the thirty-first day of January, 1834, before me, Robert Giles, junior, a commissioner of deeds in and for the city and county of New York, personally appeared Eliza Burr and Michael Werckmeister, proven to me to be the individuals described in, and who executed the foregoing conveyance, by Benjamin W. Bonney, of the city of New York, esquire, the subscribing witness thereto, to me personally known, who, being by me duly sworn, did depose and say that he knew them to be such persons; and they severally acknowledged that they executed the said conveyance for the uses and purposes therein mentioned; and the said Eliza Burr being by me privately examined

237 apart from her husband, acknowledged that she executed the same freely and without any fear or compulsion of her said husband. The alterations being noted, let it be recorded.

ROBERT GILES, JR.,
Commissioner of Deeds.

Recorded in the office of register of the city and county of New York, in lib. 309 of conveyances, page 734, the 31st day of January, 1834, at 54 min. past 2 p. m.
Examined by—

GILBERT CONTANT, *Register.*

Also a certified copy of a deed from Alexander Hamilton and wife to Michael Werckmeister, bearing date the 21st day of October, 1834, and recorded in the office of the register of the city and county of New York, on the 17th day of October, 1836, in liber 368 of conveyances, page 94, and which said deed is in the words and figures following:

238 This indenture, made the twenty-first day of October, in the year of our Lord one thousand eight hundred and thirty-four, between Alexander Hamilton, of the city of New York, and Eliza B., his wife, of the first part, and Michael Werckmeister, of the same city, merchant, of the second part: Whereas, by an indenture tripartite made tenth day of January, in the year of our Lord one thousand eight hundred and thirty-four, between Eliza B. Burr, the wife of Aaron Burr, (late Eliza B. Jumel,) of the city of New York, of the first part, the said Michael Werckmeister, of the second part, and the said Alexander Hamilton, of the third part, reciting (in substance) that Mary Jumel Bowen, of the city of New York, by certain indentures duly made and executed, did theretofore grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm unto the said Michael Werckmeister, his heirs and assigns forever, the lands and premises hereinafter particularly described, (with others,) upon certain trusts, to and for the use and benefit of the said Eliza B. Burr, (late Eliza B. Jumel,) for the consideration of fifteen

thousand dollars, she, the said Eliza B. Burr, (late Eliza B. Jumel,)
239 did order, direct, limit, and appoint that the said Michael Werckmeister convey, assign, and dispose of the said premises to the said Alexander Hamilton, and the said Michael Werckmeister, in pursuance of such order, direction, limitation, and appointment, did grant, bargain, sell, alien, remise, release, convey, and confirm unto the said Alexander Hamilton, and his heirs and assigns forever, the said premises hereinafter described; and whereas it has been agreed by and between the said parties to the said indenture last mentioned that the said Alexander Hamilton, for the consideration of fifteen thousand dollars, shall reconvey the said premises to the said Michael Werckmeister, upon the same trusts and to and for the same uses and purposes, and for which the same were held by him previous to the making of the said last mentioned indenture: Now, therefore, this indenture witnesseth that the said parties hereto of the first part, for and in consideration of the sum of fifteen thousand dollars, lawful money of the United States of America, to them in hand paid at or before the ensealing and delivery of these presents, the receipt whereof is hereby ac-
240 knowledged, have granted, bargained, and sold, alien', remised, released, conveyed, and confirmed, and by these presents do grant, bargain, & sell, alien, remise, release, convey, and confirm, unto the said party hereto of the second part, and to his heirs and assigns forever, all those certain lots, pieces, and parcels of land, premises, situate, lying, and being at Haerlem Heights, in the Twelfth ward of the city of New York, bounded as follows, to wit: Beginning at the northwest corner of the Albany post-road at the land now or late of Mr. Bauer, and thence running along the said road south fifteen degrees west one hundred and ninety-one feet; south eight degrees thirty minutes west two hundred and eighty-six feet; south ten degrees fifteen minutes west two hundred and seventy feet; south five degrees west five hundred feet; thence south twelve degrees forty-five minutes west two hundred and sixty-four feet; south ten degrees west three hundred thirty-two feet; south twenty-three degrees fifteen minutes west three hundred feet; south seventeen degrees ten minutes west one hundred forty-one feet; south five degrees thirty-five minutes west one
241 hundred eighty feet; thence south forty-nine degrees east five hundred sixty-five feet; south forty-nine degrees east one hundred and eighteen feet; south forty-five degrees thirty minutes east two hundred eighty-five feet; south forty-seven degrees thirty-minutes east ninety-seven feet; south forty-seven degrees forty-five minutes, five hundred twenty feet to the Harlem River; thence northerly along the said river to the lands of the said Mrs. Bauer; thence north forty-eight degrees west nine hundred and fifty feet; north fifty-one degrees west one thousand five hundred and twenty feet to the post-road and place of beginning, containing ninety-four acres three roods and twenty perches, and bounded on the north by land now or late of the said Mrs. Bauer, on the west by the Albany post-road, on the south by land now or late of George Wear, and on the east by Harlem River, being in all nine lots, and numbered six, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situate at Harlem, on the first day
242 of March, one thousand eight hundred and ten, as, reference being thereunto had, will fully appear, being the same premises granted and conveyed by the said party of the second part to the said Alexander Hamilton, by indenture, bearing date the tenth day of Janu-

ary, one thousand eight hundred and thirty-four, together with all and singular the ten*nants*, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above-described premise, and every part and parcel thereof, with the appurtenances:

To have and to hold all and singular the above-mentioned and described premises unto the said party of the second part, his heirs and assigns forever, in trust, nevertheless, that the said party of the second part and his heirs collect and receive the rents, issues, and profits
243 of the said above-described and hereby-conveyed premises and every part and parcel thereof, and pay over the same unto the said Eliza B. Burr, (late Eliza B. Jumel,) or, at her election, suffer and permit her, the said Eliza B. Burr, to use, occupy, and possess the said premises, and to have, take, collect, receive, and enjoy the issues and profits thereof to and for her own separate use and benefit, and to and for such other uses and purposes as the said Eliza B. Burr shall please and think fit, at her own free will and pleasure, and not subject to the control or interference of her present or any future husband, and the receipt and receipts of her, the said Eliza B. Burr, shall at all times be good and sufficient discharges for such payment and for such rents and profits, to him, the said party of the second part, his heirs, executors, and administrators, and to the person or persons who are or shall be liable to pay the same; and upon this further trust, that the said party of the second part and his heirs lease, demise, let, convey, assure, and dispose of all and singular the said above-described premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on
244 such rent or rents, for such price or prices, at such time or times, to such uses, interests, and purposes, in such manner and form as she, the said Eliza B. Burr, notwithstanding her present or any future coverture, as if she were a feme sole, shall, by any instrument in writing, executed in the presence of any two credible witnesses, order, direct, limit, or appoint. And in case of an absolute sale of said premises, or of any part thereof, to pay over the purchase-money to the said Eliza B. Burr, or invest the same as she shall order and direct. And upon this further trust, upon the decease of the said Eliza B. Burr, to convey the said above-described premises, or such parts thereof as shall not have been previously conveyed by the said party of the second part or his heirs, and with respect to which no direction or appointment shall be made by the said Eliza B. Burr in her life-time, to the heirs of the said Eliza B. Burr in fee-simple, and to pay over to them, the said heirs, such moneys *so* shall remain in the hands or under the control of the said party of the second part or his heirs, arising from collections of the rents and profits or the proceeds of the sales of the above-
245 described premises or any part thereof. Provided, however, that the said party of the second part shall be at liberty at all times to deduct and retain all reasonable and necessary costs, charges, and expenses attending the execution of the trusts hereby reposed. And the said Alexander Hamilton, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he hath not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and

described premises, or any part or parcel thereof, now are or at any time hereafter shall or may be impeached, charged, or encumbered in any manner or way whatsoever.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

ALEXANDER HAMILTON. [L. S.]
ELIZA P. HAMILTON. [L. S.]

Sealed and delivered in the presence of—
L. LIVINGSTON.

STATE OF NEW YORK,
City and County of New York, ss:

246 I hereby certify that on the twenty-first day of October, in the year one thousand eight hundred and thirty-four, before me came Alexander Hamilton and Eliza P., his wife, to me known to be the individuals described in and who executed the preceding conveyance; the said Alexander Hamilton acknowledged to me that he executed the same; and the said Eliza P., on a private examination, separate and apart from her said husband, acknowledged to me that she executed said conveyance freely and without any fear or compulsion of her said husband.

Therefore let it be recorded.

LIV. LIVINGSTON,
Commissioner of Deeds.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 17th day of October, A. D. 1836, at 3 o'clock 30 minutes p. m., in liber 368 of conveyances, p. 94, and certify the same to be a correct transcript therefrom, and of whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 6th day of December, 1872.

F. SIGEL, *Register.*

247 The complainant's counsel then gave in evidence certain deeds, including deed of appointment occupying said bill of exceptions from page 1023 to 1038, which were as follows:

248 A deed from Leonard Parkinson to Stephen Jumel, bearing date March 9, 1810, and recorded in the office of register of the city & county of New York, June 25, 1810, in liber 88 of conveyances, page 79, conveying to the said Stephen Jumel, in fee-simple, lots numbers five, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, heretofore mentioned.

A deed, bearing date the thirtieth day of July, 1827, recorded in the office of said register, in liber 223 of conveyances, page 520, August 1, 1827, whereby Stephen Jumel, then of Paris, in France, by the said Eliza Brown Jumel, as his attorney as aforesaid, and the said Eliza Brown Jumel, his wife, for the consideration of six thousand dollars, thereby acknowledged to have been received from her, conveyed unto the said Mary Jumel Bownes in fee-simple the said lot numbered five, containing thirty-nine acres and one rood. The acknowledgement of such deed was made by the said Eliza B. Jumel as such attorney,

249 and in her own behalf, in the city of New York, on the same day that the deed was dated.

The defendant then read in evidence a certified copy of a deed of appointment, signed by the said Eliza B. Jumel, bearing date the 21st day of November, 1828, and recorded in the office of the register in and for the city and county of New York on the same day, in liber 243 of conveyances, page 70, which is in the words and figures following:

250 Whereas Mary Jumel Bownes, of the city of New York, by two several indentures, one bearing date the eleventh day of December, in the year of our Lord one thousand eight hundred and twenty-seven, and the other bearing date the thirteenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, did convey to Michael Werckmeister, of the same city, merchant, all that certain lot of land and premises, which in a certain indenture made between Gerardus Post and Susan, his wife, and Stephen Jumel, bearing date the third day of May, in the year one thousand eight hundred and fourteen, are described as follows: All that certain lot, piece, or parcel of land situate, lying, and being at Harlem Heights, in the Ninth ward of the city of New York, as follows: Beginning at the northwest corner of the Albany post-road, at the land now or late of Mrs. Bauer, and thence running along the said road south fifteen degrees west one hundred and ninety-one feet; south eight degrees thirty minutes west two hundred and eighty-six feet; south ten degrees fifteen minutes west two
251 hundred and seventy feet; south five degrees west five hundred feet; thence south fifty-six degrees thirty minutes east nine hundred and fifty feet to the middle of the Fifth avenue laid out by the commissioners; thence running along the said avenue north thirty-two degrees thirty minutes east nine hundred and eighty feet, to Mrs. Bauer's line; thence north fifty-one degrees west along the fence fifteen hundred and twenty feet to the post-road and place of beginning, containing twenty-nine acres and two roods, and bounded on the north by lands now or late of said Mrs. Bauer, and on the south by lot number seven, and on the east by lots number fifteen, fourteen, thirteen, and part of lot number twelve, on the west by the Albany post-road and number six, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situated at Harlem Heights, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigail, his wife, conveyed to the said Leonard Parkinson by a certain indenture
252 bearing date the twenty-seventh day of August, in the year one thousand seven hundred and ninety-nine, and recorded in the office of the clerk of the city and county of New York, in lib. No. fifty-seven of conveyances, &c., page 354, the twenty-first day of January, in the year one thousand eight hundred, and in the secretary's office of the State of New York, in liber Deeds, endorsed "M. R.," page 110, &c., the twenty-fourth day of January, in the year one thousand eight hundred and three, reference being thereunto had will more fully appear; also all that certain other lot of land and premises which in a certain indenture made between Murray Hoffman, one of the masters of the court of chancery of the State of New York, and Francis Berger, bearing date the thirtieth day of October, in the year one thousand eight hundred and twenty-one, are described as follows: All that certain lot of land situated at Harlem Heights, in the Ninth ward of the city & county of New York, as follows, to wit: Beginning at the Albany post-road, at the northwest corner of lot number four, and running north sixty-
253 three degrees fifteen minutes west sixteen hundred and ninety feet to the Hudson River; thence north forty-five degrees west

three hundred feet, north twenty-four degrees twenty-five minutes west two hundred and ninety feet, north fifteen degrees east two hundred and ten feet, north fifty degrees forty-five minutes west ninety-one feet, north fifteen degrees thirty minutes east one hundred and eighty-three feet, to the lands of Arden's; thence south seventy-one degrees thirty minutes east, along Arden's line, two thousand one hundred and sixty feet to the Albany post-road and northeast corner of lot number five; thence along the road south fifteen degrees west four hundred and sixty-seven feet, south nine degrees west two hundred and eighty-one feet south twelve degrees west two hundred and fifty-eight feet to the place of beginning, containing thirty-nine acres one rood, and bounded on the north by Arden's land, on the west by Hudson River, on the south by lot number four, and on the east by the Albany post-road, and numbered five, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, situated at Harlem Heights,
254 March the first, one thousand eight hundred and ten; also all that certain other piece or parcel of land situated in the Second ward of the city of New York, and which was conveyed to the said Stephen Jumel by Daniel Ludlow & Rem. P. Remsen, late of the city of New York, merchants, surviving trustees of the estate of the late David Provost, of the city of New York, deceased, by an indenture bearing date the first day of May, A. D. 1812, and recorded in the office of register in and for the city and county of New York, in liber No. 97 of conveyances, &c., page 394, and which said piece or parcel of land is described in said indenture as follows: All that certain messuage and premises situate at the corner of Broadway and Liberty street, in the city of New York, being part of the said real estate whereof the said David Provost died seized, and is described in a conveyance thereof to the said David Provost from James Duncan and Elizabeth his wife, bearing date the thirtieth day of May, 1758, *by* all that certain corner dwelling-house, store-house, and lot of ground thereunto belonging, situate and being on the east side of the Broadway, in the city of New
255 York, containing in breadth in front twenty-six feet or thereabouts, be it more or less, and in the rear twenty-five feet, more or less, and in length on both sides one hundred and ten feet, more or less, bounded in front west by the Broadway, east by the ground of the heirs of William D. Count, deceased, or their assigns, south by Crown or Duke street, being on the north side thereof, and north by the house and ground now or late in the possession of Richard Tripp Cooper, which heretofore belonged to one Lieutenant Buckley, deceased, together with one-half of the wall of the house late of the said Buckley, as also a passage-way or alley, from the nearest part of the lot thereby granted, of four feet in breadth, and is in the rear of the said lot, which formerly was a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary his wife, by indenture of lease and release bearing date the first and second days of November, 1747, as by the said indenture, reference being thereunto had, will more fully and at large appear; and also all that other piece or parcel of land situate in the ward of the said city of New York, and which was
256 conveyed to the said Stephen Jumel by Mary Haight, John E. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, late of the city of New York, in the State of New York, saddler, deceased, by an indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned piece or parcel of land is described in said last-mentioned

indenture as follows: All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground and running thence southerly twenty-three feet or thereabouts, thence westerly twenty feet, thence northerly fifteen feet or thereabouts, thence easterly six feet, thence northerly eight feet, thence easterly fourteen feet to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie, southerly by ground now or late belonging to the said Stephen Jumel, westerly by ground belonging to the heirs of the said testator, and northerly partly by ground belonging to the said heirs of the said testator, and partly by ground now or late belonging to the
257 heirs of one Richard Kip, deceased, as by the annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear; and also all that certain other lot, piece, or parcel of land situate, lying, and being at Harlem Heights, in the ward of the city of New York, as follows: Beginning at the southwest corner of the land, at the Albany post-road, and running along Beekman's land south sixty degrees east three hundred and seventy feet, south sixty-five degrees thirty minutes east one hundred and forty feet, south sixty degrees east three hundred and thirty-five feet to Harlem River; thence along Harlem River north fifty-six degrees east ninety-five feet, north thirty-four degrees thirty minutes east one hundred and twenty-nine feet, north twenty degrees ten minutes east two hundred and twenty-two feet, north fifty-seven degrees twenty-minutes east two hundred and seventy feet, north forty-three degrees thirty minutes east one hundred and sixty feet, north twenty-five degrees east one hundred and forty feet, north ten degrees fifty minutes east three hundred and eighty feet to George Wear's land; thence up the hill
258 along George Wear's land north forty-seven degrees forty-five minutes west seven hundred and twenty-nine feet, north forty-seven degrees west two hundred and eighty feet, north fifty degrees west three hundred and ninety feet, north six degrees west twenty-six feet to the Albany post-road; thence along the said road south fourteen degrees fifteen minutes west three hundred and forty feet, south seven degrees west two hundred and sixty feet, due south one hundred and forty feet, south one degree thirty minutes west two hundred and twenty-seven feet, south four degrees thirty minutes west one hundred and fifteen feet, south twelve degrees thirty minutes west one hundred and eighty-eight , south twenty-two degrees thirty minutes west one hundred and seventy feet, south twenty degrees thirty minutes west three hundred and three feet to the place of beginning, containing thirty-six acres and one rood, and bounded on the north by the land of George Wear, on the east by Harlem River, on the south by Beekman's land, and on the west by the Albany post-road, and numbered
259 eight, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situate at Harlem Heights aforesaid, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigail his wife conveyed to the said Leonard Parkinson by a certain indenture bearing date the twenty-ninth day of August, in the year one thousand seven hundred and ninety-nine, and recorded in the office of the clerk of the city & county of New York, in lib. No. 57 of conveyances, and page 354, the twenty-first day of January, one thousand eight hundred, and in the secretary's office of the State of New York, in lib. deeds endorsed M. R., page 110, &c., the twenty-fourth day of January, one thou-

sand eight hundred and twenty-three, reference being thereunto had will more fully appear, together with all and singular the tenements, hereditaments, and appurtenances whatsoever unto the said above-mentioned and described premises in anywise appertaining or belonging, and the reversion and reversions, remainder, remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said Mary Jumel Bownes, of, in, and to the same and every part and parcel thereof, with the appurtenances, to have and to hold the above granted, bargained, and described premises and every part and parcel thereof, with the appurtenances, unto the said Michael Werckmeister, his heirs and assigns forever, in trust, among other trusts, that the said Michael Werckmeister or his assigns lease, demise, let, and convey, assure, and dispose of all and singular the said above-described premises, with their and every of their appurtenances, to such person or persons for *each* term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, intents, and purposes, and in such manner and form as Eliza Brown Jumel, (the wife of Stephen Jumel, late of the city of New York, now of Paris, in France,) notwithstanding her present or future coverture, as if she feme sole, shall by an instrument in writing, executed in the of any two credible witnesses, order or direct, limit, and appoint.

Now I, the said Eliza Brown Jumel, do hereby order, direct, limit, and appoint that, immediately after my demise, the said Michael Werckmeister or his heirs convey all and singular the said above-described premises to such person or persons and to such uses and purposes as I, the said Eliza Brown Jumel, shall by my last will and testament, under my hand, and executed in the presence of two or more witnesses, designate and appoint, and for want thereof, then that he convey the same to my husband, Stephen Jumel, in case he be living, for and during his natural life, subject to an annuity, to be charged thereon during his said natural life, of six hundred dollars, payable to Mary Jumel Bownes, and after the death of my said husband, or in case he shall not survive me, then, immediately after my own death, *then* to her, the said Mary Jumel Bownes and her heirs in fee.

In witness whereof I, the said Eliza Brown Jumel, have hereunto set my hand seal this twenty-first day of November, in the year one thousand eight hundred and twenty-eight.

ELIZA B. JUMEL. [L. S.]

Sealed and delivered in the presence of—
ALEX. W. BURRILL.
WILLIAM KENT.

CITY AND COUNTY OF NEW YORK, *ss:*

On the twenty-first day of November, in the year one thousand eight hundred and twenty-eight, before me personally appeared the within-named Eliza Brown Jumel, to me known to be the person described in the foregoing deed, and in my presence signed, sealed, and delivered the same to the uses and purposes therein mentioned. Whereupon I allow said deed to be recorded.

WILLIAM KENT,
Commissioner to take Ackts. of Deeds, &c.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 21st day of November, A. D. 1828, at 3 o'clock 10

minutes p. m., in liber 243, conveyances, page 70, and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and
263 affixed my official seal this 2d day of December, 1872.

F. SIGEL, *Register*.

263½ Mr. O'CONOR. By way of having that map understood a little better, I would like to take an admission that Wear's lot, which divided the Jumel estate, was 112 feet wide. Will you admit that? By measurement, it is a little short of that; but call it 112.

Mr. CHATFIELD. Yes; I will admit that. I don't remember the distance, but I presume it is right.

264 PAUL R. G. PERRY, a witness called on behalf of plaintiff, being duly sworn, testifies:

By Mr. O'Connor:

Q. Will you please produce those letters of the 22nd and 26th of May?

A. Yes, sir. (Witness produces letters.)

(Plaintiff's counsel offers in evidence the letters in regard to the marriage of Mr. and Mrs. Perry, in France. Objected to by defendant's counsel as immaterial.)

The COURT. We will get at the formal part of it, and then I will take the offer and the objection, or I will permit the objection to be stated generally now and more fully at the summing up. It seems to be so interwoven with the merits of the case that I will pass upon the question of the admissibility or relevancy of the evidence, and reserve the main question.

(Defendant's counsel admits the translation of the letters offered in evidence to be correct; but does not admit the genuineness of them. Letters marked by the court "Plaintiff's Exhibit No. 1 and 2, April 21st, 1874. S. B.")

265 Q. Are you the husband of Eliza Jumel Perry, one of the plaintiffs?

A. I am.

Q. What was your father's name?

A. My father's name was John Edward Perry.

Q. Were there any other children of that marriage but yourself?

A. No, sir; I am the only child.

Q. Had you ever been in America before you married Miss Chase, your present wife?

A. Never.

Q. How did those letters come into your possession?

A. They came by mail, directed to my father.

Q. In an envelope?

A. Yes, sir; a large envelope.

Q. And addressed to your father, John Edward Perry?

A. Yes, sir.

Q. At what place?

A. Bordeaux, France.

Q. Did you see and read them before your marriage to Miss Chase?

A. Yes, sir.

Q. Had they any influence to induce you to try to contract that marriage?

(Objected to.)

266 Q. Had they any influence as to contracting or not contracting that marriage?

(Objected to; objection overruled; defendant excepts.)

A. They had on a certain point.

Q. What was it?

A. The advantage of the offer, and what was promised in those letters.

Q. What was the influence on your mind—to marry or not to marry?

A. To marry.

Q. Had you, or your friends to your knowledge, any knowledge or information as to Mrs. Jumel's estate or the value of it prior to your marriage?

A. Not any, except by those letters.

Cross-examined by Mr. Chatfield:

Q. Did you take those letters from the post-office?

A. No, sir; they were carried home to my father.

Q. Did you ever see them in the post-office?

A. No, sir; I only saw them after my father had received them and opened them and read them.

Q. Was it after your father had read them that you first saw them?

A. Yes, sir.

Q. Have you any personal knowledge how he got them?

267 A. Only through the mail and by the carrier.

Q. Have you any personal knowledge as to how he got them?

A. Only by the habit of the postman to bring the letters to the house.

Q. Did you see the letters brought to the house?

A. No, sir; I was not present when they came.

Q. As I understood you before, the first you saw of them was after your father had opened them and read them?

A. Yes, sir.

Q. And you didn't see the postman come?

A. No, sir.

Q. Have you any personal knowledge as to where the letter came from?

A. No, sir; I have not.

Q. At that time, when you say you saw the letters, had you ever seen Madam Jumel?

A. Yes, sir.

Q. How many times?

A. I had seen her about every day for a week or ten days.

Q. Every day for a week or ten days prior to that time?

A. Yes, sir.

Q. Where did you see her?

A. In Bordeaux.

Q. Where was she stopping in Bordeaux?

268 A. She was stopping at a hotel called the Hotel de France.

Q. Had she apartments in that hotel?

A. Certainly.

Q. Any one with her?

A. My wife and my brother-in-law.

Q. Her brother, William Chase?

A. Yes, sir.

Q. They were both with her at the hotel?

A. Yes, sir.

Q. In what month did you first see your wife?

A. In December, 1853.

Q. Where did you see her?
A. At my father's house.
Q. Did she remain there during the winter?
A. No, sir; about ten or twelve days; I could not swear positively.
Q. Were you a good deal in her company during that ten or twelve days?
A. I told you I saw her pretty near every day she was in Bordeaux.
Q. You are speaking of Madam Jumel?
A. Yes, sir.
Q. I am speaking of your present wife.
A. I saw her there with her mother.
Q. When did she leave Bordeaux?
A. The same month.
Q. During the ten or twelve days they were there, were you much in the company of your wife?
269 A. Always in the presence of Mrs. Jumel.
Q. Every day?
A. Every day, as near as I can recall it.
Q. Did you see much of her during that time?
A. I always saw the three together, generally.
Q. Did you see them every day?
A. About every day; I could not swear positively, but very near every day.
Q. Where did they go from Bordeaux, as far as you know?
A. From Bordeaux they went to Toulouse, I think.
Q. When did you next see your wife after meeting them there in December?
A. I saw her in the latter part of May or the beginning of June, 1854.
Q. Did they again come to Bordeaux?
A. No, sir; I saw them first in Paris; I met them there.
Q. How much were you in their society in Paris at that time?
A. Every day, and dined with them every day.
Q. For how long a period?
A. About a week.
Q. Did they come to Bordeaux at all after that December?
A. Yes, sir; they came in June.
Q. In June, 1854?
A. Yes, sir.
Q. How long were they there then?
270 A. I should judge three weeks or a month; I could not remember, it is so far back.
Q. Had you any affection for the girl?
A. Yes, sir.
Q. Was that strong or otherwise?
A. Well, that is a very curious question; I may say strong.
Q. Would you have married her without money?
A. Most undoubtedly.
Q. You would?
A. Yes, sir.
Q. What time do you say you were married?
A. I was married in July, 1854.
Q. Was she there from May up to that time?
A. I said she came in June.
Q. She resided there from that time up to the time you were married?
A. Yes, sir.
Q. And you were together a good deal, were you not?

A. Certainly.
Q. Was Madam Jumel there during that time?
A. Yes, sir.
Q. What time did she leave Bordeaux for America?
A. She left five or six days before my marriage; she got sick.
Q. She was not there at the wedding?
A. No, sir.

Q. While she was in Bordeaux, at that time, did you see her
271 write anything?

A. I think I have seen her sign some papers there.
Q. What papers?
A. A bond and a power of attorney.
Q. A power of attorney to the American consul?
A. Yes, sir.
Q. You think you saw her sign those?
A. Yes, sir, and my marriage-contract also.
Q. What name did she sign?
A. Eliza B. Burr—Eliza Burr; I am not sure she put the B in it, but Eliza Burr I am positive of.
Q. Have you got that marriage-contract?
A. I have it.
Q. Here in court?
A. I have a copy of it.
Q. Have you got the original here in court?
A. No, sir; we cannot get it. They keep the original, and give a certificate in France.
Q. Is the original in France?
A. Yes, sir.
Q. Have you got that power of attorney given to the American consul?
A. Yes, sir.
Q. Where is that?
A. I have it here.
Q. Here in court?
A. Yes, sir.

Q. The original?
272 A. Yes, sir.
Q. How did you get that?

A. After the marriage was over, the consul handed it to me or to my wife.
Q. With her marriage-certificate?
A. No, sir; not from the United States consul.
Q. Was there any ceremony besides that?
A. Yes, sir; on the 13th I was married by the mayor of Bordeaux, and on the 15th by the Roman Catholic church and the Episcopal church, and then by the United States consul.
Q. Have you a marriage-certificate for either of the marriages?
A. I have one from the mayor; I have not any from the priests of either the Roman Catholic or Episcopal religion.

Redirect:

Q. You have spoken of the envelope of those papers; did you see the envelope?
A. Yes, sir.
Q. Did you see your father tear it open?
A. I don't know that I saw him tear it open, but I know his general habit. I did not see him tear it open.

Q. At the time you saw the letter, was the envelope there then?
A. Yes, sir; I handed it back to my father.
Q. The envelope was with it?
A. Yes, sir.
Q. But it had been torn open and read before you saw the en-
273 velope?
A. Yes, sir.
Q. You have been asked whether you would have married your wife if she had no money; I want to know whether you would have married without your father and mother's consent.
A. I could not do so without my father's consent.
Q. Would you have obtained that consent, as far as you know, if those letters had not been received? Would you have obtained such a consent without this settlement from Madam Jumel, as far as you know or believe?
(Objected to.)
Q. What was your age at that time?
A. I was twenty-one years and one month at the time I was married.

274 ELIZA J. PERRY sworn.

Direct examination by Mr. O'Connor:

Q. You are one of the plaintiffs in this suit?
A. I am.
Q. Your name is what?
A. Eliza Jumel Perry.
Q. (Handing letters to witness.) I will ask you to look at those two letters in French, and say whether you saw them before they were signed.
A. I did.
(Defendant's counsel objects to the evidence on the ground that it is a transaction with a deceased person. Admitted subject to objection.)
Q. Did you see the signature, "Eliza B. Burr," to those letters that are there?
A. I did.
Q. Who put them there?
A. Eliza B. Jumel.
Q. While in France, during this visit, what name did Madam Jumel commonly use?
A. Madam, widow of Aaron Burr, in English.
Q. She signed those papers?
A. Yes, sir.
Q. Did you read them previous to her signature?
(Objected to on the ground that the letters speak for themselves.)
275 A. I did.
Q. Do you know what was done with those letters after they were signed?
A. I do.
Q. What was it?
A. Immediately after they were put in an envelope, she and I went in a carriage, and drove to the general post-office, from the hotel where we were stopping, and there she deposited the letters, having prepaid the postage-rate.
Q. How were the letters addressed?
A. To Mr. John Edward Perry, Bordeaux, France.
Q. Was that before or after your marriage to Mr. Perry?

A. That was prior to my marriage.

Q. Had the contents of those letters any influence on your mind in reference to that marriage?

(Objected to under section of the code, and on the ground that it was not an estate to proceed from the witness to her husband or to her husband's paren—)

The COURT. I will take the question subject to objection.

Q. Had the contents of those letters any influence, and what, on your mind in reference to that marriage?

276 A. The' had a great deal, sir; receiving a certain amount of money immediately into my hands was one inducement.

Q. Did it operate on you as an inducement to marry or not to marry?

A. It did, to marry.

Q. Had you any knowledge yourself or information at that time, beyond what the letters may have conveyed, of the extent or value of Madame Jumel's property?

A. I had not.

Q. You knew that she lived out there?

A. Yes, sir.

Q. But as to value or extent you had no knowledge whatever?

A. No, sir.

Q. You were about eighteen or twenty years of age then?

A. Yes, sir.

Cross-examined by Mr. Chatfield:

Q. What was your real age at that time?

A. About twenty. I was born in March.

Q. How long had you been in Paris when your letters were mailed, as you say?

A. We had been in Paris about a fortnight, from Italy.

Q. I remember, these letters are dated towards the close of May of that year?

A. The 22nd and the 26th of May.

277 Q. Were they both mailed at the same time?

A. No, sir; they were not; each was mailed on a separate day.

Q. Did you see any letter from John Edward Perry?

A. I did.

Q. While you were in Paris?

A. Yes, sir; while I was in Paris.

Q. Before or after the first letter was mailed?

A. There was an answer to the first letter. I recollect that. I recollect seeing two letters from John Edward Perry.

Q. Did you see any letter from him prior to the mailing of the first letter?

A. I could not say, sir.

Q. Are you quite sure of seeing a letter from him between the mailing of the two letters?

A. Yes, sir.

Q. On what day before the mailing of the last one?

A. I could not say, but I am positive that I saw an answer to the first letter.

Q. You cannot state the time exactly?

A. I cannot state the day.

Q. Can you state whether it was before the second letter was mailed, or not?

A. Yes, sir.

Q. You had seen Mr. Perry, who is now your husband, prior to the writing of those letters, had you not?

278 A. I had.

Q. You saw him in Bordeaux, didn't you?

A. I saw him in Bordeaux.

Q. What time?

A. The month of December, 1853.

Q. Was there a marriage proposition between you and he at that time?

A. Not at that time.

Q. Did you see a good deal of him while you were there?

A. He used to come mostly every day to the hotel where we were stopping at.

Q. And you went sometimes to his father's house with Madam Jumel?

A. Yes, sir; with Madam Jumel.

Q. How many times did you go there?

A. Two or three times.

Q. Did you understand at that time anything about the pecuniary situation of Mr. Perry, senior?

A. Well, I understood that he was a gentleman of means and respectability; that is all I understood.

Q. I mean as to his money situation?

A. No, sir; except as I have said.

Q. Had you an affection for his son?

A. At what time do you mean?

Q. At the time of writing these letters?

A. I cannot say that I had such a very great affection.

279 Q. You cannot say whether you would have taken the man without the money or not?

A. I wish to explain. It is what the French call in France a marriage de convenience, for the parents have more to do with marriage there than any one else. I left it all to my aunt.

Q. You were willing to marry any one she thought fit and proper for you to marry?

A. Not anybody.

Q. When you did marry him, had you then come to the conclusion that you would marry him without any regard to money?

A. No, sir; I had not.

Q. Did you expect any money from him or his father?

A. No, sir. I expected a settlement from my aunt.

Q. You got 5,000 francs a year, did you not?

A. 100,000 francs, dot. $20,000 in gold.

Q. You received that $20,000 in gold?

A. No, sir.

Q. Did you receive the 5,000 francs?

A. Yes, sir.

Q. And that is what you say influenced you as money in hand?

A. Yes, sir; somewhat.

Q. Did she continue that payment yearly as long as she lived?

A. No, sir; she did not.

280 Q. Did she not very nearly, so as to make it practically a provision for you by the year?

A. Yes, sir; she gave me money.

Q. She gave you money every year, didn't she, more or less?

A. She more or less supported me.

Q. Including your support, did you receive anything more than the 5,000 francs, $1,000?
A. I expect I received more.
Q. Where did you live mainly, after your marriage, before she died?
A. I resided nearly two years in France, and she sent for us.
Q. Immediately after your marriage?
A. Immediately after our marriage we came on here on a bridal tour, and then returned to France.
Q. Then when you came back to America?
A. Then we resided at the mansion for some time.
Q. Then you resided in 7th avenue for some time, in a house she bought?
A. Yes, sir.
Q. Were you mainly a member of her family from that return from France until she died?
A. Yes, sir.

281 CHARLES F. A. HINRICHS, a witness called on behalf of plaintiff, being duly sworn, testifies:

By Mr. O'Connor:

Q. Were you acquainted with Madam Jumel in her life-time?
A. Yes, sir.
Q. For a number of years?
A. Yes, sir.
Q. Were you also acquainted with Michael Worckmeister, who was her friend and tenant?
A. Yes, sir.
Q. (Handing deed to witness.) Please to look upon the deed dated the 20th of August, 1842, and purporting to be signed by Eliza B. Jumel and Michael Worckmeister, and say if the signature "C. F. A. Hendricks," as a subscribing witness to that, is your signature.
A. Yes, sir.
Q. Were you present when it was executed?
A. I think I was. I know the signature.
Q. You think you were present when it was executed?
A. Yes, sir.
Q. Did you know Abner Cook, jr., a lawyer?
A. Yes, sir; at that time I did. I don't recollect him now. I recollect the name. He was there, I think.
Q. You think he was there?
A. I think so.
282 Q. Did you know Phillipon?
A. Yes, sir.
Q. Was he there?
A. I think he was. He was in the store several times.
Q. Do you remember anything about the putting of that deed on record?
A. Yes, sir.
Q. Who put it on record? Who took it to the office?
A. That I cannot say.
Q. Why do you say you know about its being put on record, if you cannot say who took it to the office?
A. It is certified here. It is so long ago I do not remember exactly.
Q. Have you any recollection of any fact about that being taken to the record-office?
A. I have not.

Q. You cannot recall about that?

A. I cannot recall it.

Q. Have you any recollection about its being got from the record-office?

A. No, sir; I have not, but that was in Mr. Worckmeister's possession. I remember the papers; the deeds afterwards.

Q. You remember that that deed was in Worckmeister's possession?

A. Yes, sir; for Madam Jumel—we had a box for her.

283 Q. Did you know Francis Phillipon?

A. I knew him. I was not particularly acquainted with him, but I knew him, and know that he has called in the store twice or three times. He was acquainted with Worckmeister.

Q. Was he acquainted with Madam Jumel?

A. Yes, sir; I have seen him up there once at the house.

Q. You suppose he was present when you signed that paper?

A. Yes, sir.

Q. At what place were you when you signed that paper—was it at the store or at Mr. Cook's office?

A. I think it was at the store.

Q. At Worckmeister's store?

A. Yes, sir; as near as I recollect.

Q. At the time it was thus signed at the store was any money paid in your presence or to your knowledge to anybody, either to Madam Jumel or to Worckmeister?

(Obj'd to on the ground that the deed expresses a consideration, which speaks for itself and is conclusive between the parties.)

The COURT. For what was it offered?

Mr. O'CONNOR. This whole transaction was a sham, as we contend, and think no evidence is necessary to show it. These papers

284 bear the same date, and were executed, we presume, at the same moment. They are carried to the register's office and recorded at the same minute—that is, the deed to Phillipon and the deed back from Phillipon to Madam Jumel. On the face of the papers they appear to have been executed at the same time, and they also appear to have been recorded on the same day and at the same hour and minute. The conveyance to Phillipon is for a consideration of $200,000 alleged to have been paid by Phillipon for the conveyance. The conveyance back to Madam Jumel is for a consideration of $1.00.

The COURT. I will take it subject to the objection.

Mr. CHATFIELD. Your honor hardly understands my objection without some consideration of the prior conveyances. The trust to Worckmeister makes Madam Jumel sole beneficiary under that trust. She is not only entitled to the rents and profits, but if she should so elect she is entitled to the possession of the property in lieu of rents and profits. It contains some powers which were good powers under the statute, undoubtedly, but the trust provides that if she dies without an ap-

285 pointment or will, the estate should go to her heirs at law, so that under the statute of this State she was absolutely the owner of this property; she was the sole beneficiary, having not only the right to the rents and profits, but to possession, and if I understand the statutes, it is an executed trust in her behalf; so it was wholly immaterial if she got $1,000.00, or $100,000.00, or $10,000,000.00 for it. They have no right holding, claiming under her. They are bound by whatever she did under that trust-deed, and therefore it is immaterial whether the consideration was a dollar or $100,000.00.

The COURT. I said I would take the evidence and rule upon the objection. I will reserve it.

A. No, sir.

(Mr. O'Conor puts in evidence the deed to Phillipon and the deed from Phillipon back to Madame Jumel, marked by the court "Plffs'. Exhibits Nos. 3 and 4, April 27, 1874, S. B.," and are as follows:)

286 This indenture, made this twentieth day of August, in the year of our Lord one thousand eight hundred and forty-two, between Eliza B. Jumel, of the city of New York, widow of Stephen Jumel, late of the said city, merchant, of the first [page 40—1] part, and Michael Werckmeister, of [2] said city, merchant, of the second part, [3,] and Francis Phillippon, also of said city, [4,] merchant, of the third part, witnesseth:

Whereas Mary Jumel Bownes, of the city of New York, (now the wife of Nelson Chase, esquire, attorney at law,) by certain indentures duly made and executed, did heretofore grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm unto the party of the second part, and to his heirs and assigns, forever, the land and premises hereinafter described, to have and to hold the same, and every part and parcel thereof, to him, his heirs and assigns, forever, in trust, nevertheless, (amongst other things,) that the party of the second part, or his heirs, lease, demise, let, convey, assure, and dispose of all and singular the said premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, intents, and

287 purposes, and in such manner and form as she, the said Eliza Brown Jumel, (party of the first part to this indenture,) notwithstanding her present or any future coverture, as if she were a feme sole, shall, by any instrument in writing, executed in the presence of any two credible witnesses, order, direct, limit, or appoint; and in case of an absolute sale of said premises, or any part thereof, [page 41—1,] to pay over the purchase-money to the said [2] Eliza Brown Jumel, or invest the same as [3] she shall order and direct, as by the said indenture or the records thereof in the office of the register of the city and county of New York will more fully and at large appear; and whereas the said party of the third part hath contracted and agreed with the said party of the first part for the absolute purchase of all the said lands and premises hereinafter particularly described, (being the lands and premises conveyed to the said party of the second part in trust by the deeds above referred to,) with their appurtenance, in fee-simple, for the sum of one hundred thousand dollars, lawful money of the State of New York:

Now, therefore, this indenture witnesseth: That the said party of the first part, in consideration of the premises, and the sum of

288 one hundred thousand dollars to her in hand paid by the said party of the third part, the receipt whereof is hereby acknowledged, pursuant to and in execution of the power and authority reserved, vested, and given to and in her by the indenture hereinbefore mentioned, and by force and virtue thereof, and of all and every other power and authority to her in that behalf reserved, or her in any wise thereunto enabling, hath ordered, directed, limited and appointed, and by this instrument in writing, under her hand and seal, and by [page 42—1] her duly executed, signed, sealed, and [2] delivered in the presence of two credible [3] witnesses, who have hereunto set and subscr[4]ibed their names as witnesses thereto, doth absolutely and irrevocably order, direct, limit, and appoint that the said party of the second part, by these presents, convey, assure, and dispose of the said premises hereinafter described to the said party of the third part,

in the manner and form and for the price herein expressed and contained; and the said party of the second part, in consideration of the premises, and of one dollar to him in hand paid by the said party of the third part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in pur-
289 suance of the order, direction, limitation, and appointment herein contained hath granted, bargained, sold, remised, released, conveyed, assured, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, remise, release, convey, assure, enfeoff, and confirm unto the said party of the third part, and to his heirs and assigns forever, all those certain lots, pieces, or parcels of land and premises situate, lying, and being in the city and county of New York, and bounded and described as follows, to wit: All those [page 43—1] certain lots, pieces, and parcels of land [2] and premises situate, lying, and being at [3] Harlem Heights, in the Twelfth ward of the city of New York, bounded as follows, to wit: beginning at the northwest corner of the Albany post-road, at the land now or late of Mrs. Bauer, and thence running along the said road south fifteen degrees west one hundred and ninety-one feet; south eight degrees thirty minutes west two hundred and eighty-six feet; south ten degrees fifteen minutes west two hundred and seventy feet; south five degrees west five hundred feet; thence south twelve degrees forty-five minutes west two hundred sixty-four feet; south ten degrees west three hundred and thirty-
290 two feet; south twenty-three degrees fifteen minutes west three hundred feet; south seventeen degrees ten minutes west one hundred forty-one feet; south five degrees thirty-five minutes west one hundred eighty feet; thence south forty-nine degrees east five hundred sixty-five feet; south forty-nine degrees east one hundred eighteen feet; south forty-five degrees thirty minutes east two hundred eighty-five feet; south forty seven degrees thirty minutes east ninety-seven feet; south forty-seven degrees forty-five minutes five hundred [page 44—1] feet to Haerlem River; thence northerly along [2] the said river to the lands of the said Mrs. [3] Bauer; thence north forty-eight degrees west nine hundred and fifty feet; north fifty-one degrees west one thousand five hundred and twenty feet to the post-road and place of beginning, containing ninety-four acres three roods and twenty perches, and bounded on the north by lands now or late of the said Mrs. Bauer, on the west by the Albany post-road, on the south by the land now or late of George Wear, and on the east by Haerlem River, being in all nine lots and numbered six, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, according to a map made by Charles Loss,
291 one of the city surveyors, of the estate of Leonard Parkinson, esquire, situated at Haerlem, on the first day of March, one thousand eight hundred and ten, as, reference being thereunto had, will fully appear.

Also, all that certain lot, piece, or parcel of land situate, lying, and being at Harlem Heights, in the Twelfth (late Ninth) ward of the city of New York, on the westerly side of the Kingsbridge road, bounded easterly by the Kingsbridge road, northerly by land now or lately belong[page 45—1]ing to Joseph W. Havens, westerly by [2] the Hudson River and the Fourteenth av[3]enue as laid out in the general plan [4] of the said city of New York, and southerly by land now or lately belonging to Hannah Murray, containing forty acres, be the same more or less, particularly described on a certain map of said tract of land laid out into lots on the intersecting avenues and streets, made by D. Ewen, city surveyor, dated New York, January, 1835, enlarged from a survey

made by John Randall, junior, and filed in the street-commissioner's office in the city of New York.

Also, all that certain other piece or parcel of land situate in the
292 Second ward of the city of New York, and which was conveyed to Stephen Jumel by David Ludlow and Rem. P. Remsen, late of the city of New York, surviving trustees of the estate of the late David Provost, of the city of New York, deceased, by an indenture bearing date the first day of May, A. D. 1812, and recorded in the office of register in and for the city and county of New York, in lib. No. 97 of conveyances, &c., page 394, and which said piece or parcel of land is described in said indenture as follows:

[Page 46—1] All that certain messuage and premises [2] situate at the corner of Broadway and [3] Liberty street, in the city of New York, being part of the said real estate whereof the said David Provost died seized, and is described in a conveyance thereof to the said David Provost from James Duncan and Elizabeth his wife, bearing date the thirtieth day of May, 1758, *by* all that certain corner dwelling-house, storehouse, and lot of ground thereunto belonging, situate and being on the east side of the Broadway, in the city of New York, containing in breadth in front twenty-six feet or thereabouts, be it more or less, and in the rear twenty-five foot, more or less, and in length on both sides one hundred and ten feet, more or less, bounded in front
293 west by the Broadway; east by the ground of the heirs of William De Count, deceased, or their assigns; south by Crown or Duke street, being on the north side thereof; and north by the house and ground now or late in the possession of Richard Tripp Cooper, which heretofore belonged to one Lieutenant Buckley, deceased, together with one-half of the wall of the house late of the said Buckley, as also a passage-way or alley from the nearest part of the lot thereby granted, of four feet in breadth, and is in the rear of the said lot, which for- [page 47—1] merly was a passage leading to a well, as [2] the same was sold and conveyed unto [3] Henry Ludlow by William Ludlow and Mary his wife, by indenture of lease and release bearing date the first and second days of November, 1747, as by reference to said indenture will more fully and at large appear.

And also all that certain other piece or parcel of land situate in the Second ward of the city of New York, and which was conveyed to Stephen Jumel by Mary Haight, John E. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, late of the city of New York, in the State of New
294 York, saddler, deceased, by an indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned piece or parcel of land is described in said last-mentioned indenture as follows:

All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground and running thence southerly twenty-three feet or thereabouts; thence westerly twenty feet; thence northerly fifteen feet or thereabouts; thence easterly six feet; thence northerly eight feet; thence easterly fourteen feet to the place of beginning, and [page 48—1] bounded easterly by ground now or late be- [2] longing to one Peter Ogilvie; southerly by [3] ground now or late belonging to the said Stephen Jumel; westerly by ground belonging to the heirs of the said testator, and northerly partly by ground belonging to the heirs of the said testator and partly by ground now or late belonging to the heirs of one Richard Kip, deceased, as by the annexed map (meaning

the map annexed to the said last-mentioned indenture) will more fully appear; which said last mentioned and described premises are now known as numbers 71 and 73 Liberty street, in the city of New
295 York; together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the right, title, and interest, claim and demand of the said party of the second part, of, in, and to the said premises, to have and to hold the same, with the appurtenances, to the said party of the third part, and to his heirs and assigns, in fee-simple, forever.

And the said Michael Werckmeister, party of the second part, doth for himself, his heirs, executors, and administrators covenant, promise, and agree to and with the said party of the third part, his heirs and assigns, that the said lands and tenements [page 49—1] now are and from henceforth shall continue, [2] remain, and be unto the said party of the [3] third part, his heirs and assigns, free and [4] clear, and freely and clearly acquitted and discharged of and from all former and other grants, charges, or incumbrances made, suffered, or committed by him or any other person lawfully claiming, or to claim, by, from, or under him.

And the said Eliza B. Jumel, party of the first part, for myself and my heirs, do hereby covenant and agree to and with the said party of the third part and his heirs and assigns, that the said party of the
296 second part is lawfully seized of a good, indefeasible estate of inheritance in the said premises, and has full right and power to sell and convey the same in fee-simple absolute; that the said premises are clear and free of all incumbrances; that the said party of the third part may forever hereafter have, hold, possess, and enjoy the same without any suit, molestation, or interruption by any person whatever claiming any lawful right therein.

And that the said parties of the first and second parts, and all persons claiming under them, or either of them, will at any time hereafter, at the reasonable request and expense of the said party of the third part, his heirs or assigns, make all such further assurances for the more efficient and effectual conveying the said [page 50—1] premises, with the appurtenances, as may [2] be reasonably required by him or them, [3,] and that the said party of the first part [4] will warrant and defend the said premises with the appurtenances unto the said party of the third part, and his heirs and assigns, forever.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

ELIZA B. JUMEL. [L. S.]
M. WERCKMEISTER. [L. S.]

CPT. HINRICKS.
ABNER COOK, Jr.

297 STATE OF NEW YORK,
City & County of New York, ss:

On this 22d of August, 1842, before me came Abner Cook, junior, the subscribing witness to the foregoing conveyance, to me known, and being by me duly sworn, said that he resided at No. 65 Bank street, in the city of New York; that he saw Eliza B. Jumel and Michael Werckmeister execute the said conveyance; that he knew them to be the individuals described in and who executed the same, and that he, said Cook, became the subscribing witness thereto, which is to me satisfactory evidence of the due execution thereof.

JNO. S. WOODWARD,
Comm'r of Deeds, &c.

Recorded in the office of register of the city and county of New York, in lib. 427 of con's, page 459, Aug. 27, 1842, at 30 min's past 10 a. m.
Exam'd by

J. SHERMAN BROWNELL, *Reg.*

(Endorsed:) Copy. Eliza B. Jumel & Michael Werckmeister to Francis Philippon. Deed. Dated Augt. 20, 1842. No. 3. April 27, 1874. S. B.

298 [Page 51—1] This indenture, made this twentieth [2] day of August, in the year of our Lord [3] one thousand eight hundred and forty-two, between Francis Phillippon, of the city of New York, of the first part, and Eliza B. Jumel, of the said city, widow of the late Stephen Jumel, of said city, merchant, of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar to him in hand paid by the said Eliza B. Jumel, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, released, and confirmed, and by these presents doth grant, bargain, sell, release, and confirm unto the said Eliza B. Jumel, and to her heirs and assigns, forever, all those certain lots, pieces, and parcels of land and premises situate, lying, and being at Haerlem Heights, in the Twelfth ward of the city of New York, bounded as follows, to wit: Beginning at the northwest corner of the Albany post-road, at the land now or late of Mrs. Bauer, and thence running along said road south fifteen degrees west one hundred and ninety-one feet; south eight degrees thirty minutes west two hundred and eighty-six feet; south ten degrees fifteen minutes west two hundred and seventy feet; south five degrees west five hundred
299 feet; thence south twelve degrees forty-five minutes west two hundred and sixty-four feet; south ten degrees west three hundred [page 52—1] thirty-two feet; south twenty-three degrees [2] fifteen minutes west three hundred feet, [3;] south seventeen degrees ten minutes west one hundred forty-one feet; south five degrees thirty-five minutes west one hundred eighty feet; thence south forty-nine degrees east five hundred sixty-five feet; south forty-nine degrees east one hundred eighteen feet; south forty-five degrees thirty minutes east two hundred eighty-five feet; south forty-seven degrees thirty minutes east ninety-seven feet; south forty-seven degrees forty-five minutes five hundred twenty feet to Haerlem River; thence northerly along the said river to the lands of the said Mrs. Bauer; thence north forty-eight degrees west nine hundred and fifty feet; north fifty-one degrees west one thousand five hundred and twenty feet to the post-road and place of beginning, containing ninety-four acres three roods and twenty perches, and bounded *of* the north by land now or late of the said Mrs. Bauer, on the west by the Albany post-road, on the south by the land now or late of George Wear, and on the east by Haerlem River, being in
300 all nine lots; and numbered six, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, [page 53—1] situated at Haerlem, on the first day of [2] March, one thousand eight hundred and ten, [3] as reference being thereunto had will fully [4] appear.

And also all that certain lot, piece, or parcel of land situate, lying, and being at Haerlem Heights, in the Twelfth ward (late Ninth ward) of the city of New York, on the westerly side of the Kingsbridge road; northerly by land now or lately belonging to Joseph W. Havens; westerly by the Hudson River and the Fourteenth avenue, as laid out in the

ground-plan of the said city of New York; and southerly by land now or lately belonging to Hannah Murray, containing forty acres, be the same more or less, particularly described on a certain map of said tract of land laid out into lots on the intersecting avenues and streets, made by D. Ewen, city surveyor, dated New York, January, 1835, enlarged from a survey made by John Randall, junior, and filed in the street-commissioner's office in the city of New York.

Also all that certain other piece or parcel of land situate in the
301 Second ward of the city of New York, and which was conveyed to Stephen Jumel by David Ludlow and Rem P. Remsen, late of the city of New York, merchants, surviving trustees of the estate of the late David Provost, of the city of New York, [page 54—1] deceased, by an indenture bearing date [2] the first day of May, A. D. 1812, and recorded [3] in the office of register in and for the city and county of New York, in lib. No. 97 of conveyances, &c., page 394, and which said piece or parcel of land is described in said indenture as follows: All that certain messuage and premises situate at the corner of Broadway and Liberty street, in the city of New York, being part of the said real estate whereof the said David Provost died seized, and is described in a conveyance thereof to the said David Provost from James Duncan and Elizabeth his wife, bearing date the thirtieth day of May, 1758, *by* all that certain corner dwelling-house, store-house, and lot of ground thereunto belonging, situate and being on the east side of the Broadway, in the city of New York, containing in breadth in front twenty-six *foot* or thereabouts, be it more or less, and in the rear twenty-five feet, more or less, and in length on both sides one hundred and ten *foot*, more or less; bounded in front west by the Broadway, east by the ground of the heirs of William De Count, deceased, or their assigns; south by Crown
302 or Duke street, being on the north side thereof; and north by the house and ground now or late in the possession of Richard Tripp Cooper, which heretofore belonged to [page 55—1] one Lieutenant Buckley, deceased, together [2] with one-half of the wall of the house [3] late of the said Buckley, as also a passage-way or alley from the nearest part of the lot thereby granted, of four feet in breadth, and is in the rear of the said lot, which formerly was a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary his wife, by indenture of lease and release bearing date the first and second days of November, 1747, as by the said indenture, reference being thereunto had, will more fully and at large appear.

And also all that certain other piece or parcel of land situate in the Second ward of the said city of New York, and which was conveyed to the said Stephen Jumel by Mary Haight, John E. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, late of the city of New York, saddler, deceased, by an indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned indenture is as follows:
303 All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground, and running thence southerly twenty-three feet or thereabouts; [page 56—1] thence westerly twenty feet; thence northerly [2] fifteen feet or thereabouts; thence easterly [3] six feet; thence northerly eight feet; thence [4] easterly fourteen feet to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie; southerly by ground now or late belonging to the said Stephen Jumel; westerly by ground belonging to the heirs of the said testator, and northerly partly by ground belonging to

the heirs of the said testator and partly by ground now or late belonging to the heirs of one Richard Kip, deceased, as by the annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear, (the said last-mentioned and described premises are now known as numbers 71 & 73 Liberty street, in the city of New York,) together with all and singular the hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the
304 reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and every part and parcel thereof; and also all the estate, right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of the said party of the first part, in, to, or out of the said lands, tenements, and hereditaments, and all and [page 57—1] singular other the premises hereinbefore [2] mentioned, with the appurtenances, unto the [3] said Eliza B. Jumel, her heirs and assigns, and to his and their only proper use and behoof. And the said party of the first part doth for himself, his heirs, executors, and administrators covenant, promise, and agree to and with the said party of the second part, her heirs, executors, administrators, and assigns, in manner and form following, that is to say: that the said Eliza B. Jumel, her heirs and assigns, shall and may peaceably and quietly have, hold, and enjoy the said lands, tenements, hereditaments, and premises, and every part and parcel thereof, without the let, suit, trouble, eviction, or disturbance of the said Francis Phillippon, his heirs or assigns or of or by any other person or persons lawfully claiming, or to claim, the same, from, by, or under, or in trust for him, them, or any of them; and that the said lands, tenements, hereditaments, and premises, and every
305 part and parcel thereof, now are and from henceforth shall continue and remain *and remain* and be unto the said Eliza B. Jumel, her heirs and assigns, free, and clear and freely and clearly acquitted, exonerated, and discharged of, from, and against all former and other gifts, grants, bargains, sales, mortgages, estates, titles [page 58—1] troubles, charges, and incumbrances what[2]soever, made, done, committed, occasioned, or [3] suffered by the said Francis Phillippon, or by [4] any person lawfully claiming or to claim by, from, or under him, or by his, their, or any of their, act, means, assent, or procurement.

And the said Francis Phillippon, and his heirs, all and singular the aforesaid lands, tenements, hereditaments, and premises, and every part and parcel thereof, unto the said Eliza B. Jumel, her heirs and assigns, shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

F. PHILLIPPON. [L. S.]

In the presence of—the words "ten degrees fifteen," on 1st page written over an erasure, & "to the," on 2d page erased, & "1842," on 3d page erased, & "1812," on same page interlined, & "and," on 6th page, erased before execution—

ABNER COOK, Jr.,
65 *Wall St.*

306 STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 22d of August, 1842, before me came Abner Cook, junior, the subscribing witness to the foregoing conveyance, to me known, and being by me duly sworn, [page 59—1] deposed that he resided at No. 65 Bank street, [2] in the city of New York; that he saw Francis [3] Phillippon execute the said conveyance; that he knew him to be the individ-

ual described in and who executed the same, and that he, the said Cook, became the subscribing witness thereto, which is satisfactory evidence to me of the due execution thereof.

JNO. S. WOODWARD,
Comm. of Deeds, &c.

Recorded in the office of register of the city and county of New York, in lib. 427 of con's, page 463, Aug't 27th, 1842, at 20 min's past 10 a. m.
Exam'd by

J. SHERMAN BROWNELL, *Reg.*

(Endorsed:) Copy. Francis Phillippon to Eliza B. Jumel. Deed. Dated Aug't 20, 1842. No. 4. April 27, 1874. S. B.

307 (Deft.'s counsel admits that the subscribing witness, Abner Cook, is long since dead.)

Q. At that time, in the year 1842, and before and after, for many years, was Mr. Werckmeister a tenant in the Liberty street house of Madame Jumel?

A. Yes, sir.

Q. And familiar with her?

A. Yes, sir.

Q. You were Werckmeister's clerk and agent?

A. Yes, sir.

Q. And lived with him from what time to what time?

A. From 1833 until he died.

Q. Long after this transaction?

A. In 1843.

Q. (Handing papers to witness.) Look at both of those papers, and say whether you are familiar with them, as being there among Madam Jumel's papers in Werckmeister's custody—one signed by Phillippon and the one you witnessed.

A. Yes, sir.

Q. Now as to the other?

A. Yes, sir; and that also; I think those are the papers that were there.

(Mr. O'Conor puts in evidence the register's certificate of the time of recording, which were as follows:)

308 Recorded in the office of register of the city and county of New York, in lib. 427 of con's, page 459, Aug. 27, 1842, at 30 min's past 10 a. m.
Exam'd by

J. SHERMAN BROWNELL, *Reg.*

Recorded in the office of register of the city and county of New York, in lib. 427 of con's, page 463, Aug. 37, 1842, at 30 min's past 10 a. m.
Exam'd by

J. SHERMAN BROWNELL, *Reg.*

Cross-examined by Mr. Chatfield:

Q. What is your present age?

A. Sixty.

309 Q. Have you any recollection as to the season of the year when you were at the store with these parties, as matter of memory?

A. No, sir; it is on my mind that it was in the summer-time, but I would not be sure about it.

Q. Where did Francis Phillipon live at that time?
A. That I don't know.
Q. Do you know how long he lived to Worckmeister's at that time?
A. I think he lived in Whitehall street; I am not positive, though.
Q. Down town?
A. Yes, sir.

By Mr. O'Connor:

Q. Phillipon is long dead?
A. Yes, sir.

By Mr. Chatfield:

Q. Had you seen him up in that neighborhood on other occasions than upon this occasion?
A. I don't recollect. I may have seen him. I saw him several times. I recollect him.
Q. Do you know where you saw him several times?
A. In the street; in the store.
Q. What part of the city?
A. Down town.
Q. Was Worckmeister's office down town?
A. Yes, sir.
310 Q. Where?
A. On the corner of Liberty street and Broadway—150 Broadway.
Q. So he lived tolerably near Phillipon—in the same neighborhood?
A. It was not very far.
Q. What was Phillipon's business?
A. I don't know that he had any business at that time.
Q. Was he a gentleman of leisure?
A. He was quite an aged man.
Q. Have you ever seen Abner Cook since that time?
A. I don't recollect.
Q. Had you ever seen him before?
A. I don't recollect.
Q. All you knew of his being there, then, was from his being called Abner Cook?
A. Yes, sir.
Q. You had no knowledge of the man?
A. Yes, sir; I think I knew him; but it is so long ago now I don't know. I am pretty sure I knew Mr. Cook.
Q. Did you know him when he lived in Otsego County?
A. No, sir.
Q. Where did you know him?
A. He had some business for Madam Jumel, and I think he was in the store when I saw him.
311 Q. But you stated he was never in the store but on that occasion.
A. I may have seen him, I said before.
Q. You don't remember to have seen him?
A. I don't remember distinctly any particular spot I saw him in.
Q. Did you see him after he went to Texas?
A. No, sir.
Q. He was here in New York but a short time, was he not?
A. That may be; I don't remember. I could not bring him to my mind now.
Q. You were at the store when the party came there?

A. Yes, sir.
Q. And you saw the deeds signed, or one of them, which you witnessed?
A. Yes, sir.
Q. Were you busy about the store at that time? You were a clerk there, were you not?
A. Yes, sir; I was a clerk there.
Q. Were you busy except when you were simply called to put your name there?
A. I don't recollect.
Q. Do you remember having any conversation with the parties?
A. No, sir.
Q. Do you remember having your eye upon them all the time you were there?
312 A. No, sir.
Q. Money might have been paid and you not see it?
A. I think I would have seen it paid, or known about it.
Q. Why?
A. Because I was there and conversant with the business of Worckmeister and of madam both.
Q. How could you know money was paid or not when you say you were very busy there?
A. I think such a sum of money, I should have known it.
Q. Suppose it had been a check?
A. Well, I think I would have known it.
Q. Might a check have passed there and you not know it?
A. Possibly. I think I would have known it.
Q. How long ago did Worckmeister die?
A. 1843.
Q. Did Madame Jumel keep all her papers at that store?
A. I don't know whether she kept them all there, but we had a good many there.
Q. She had a box?
A. Yes, sir.
Q. Did she ever show you the contents of the box?
A. I could see it any time.
313 Q. Was it open?
A. Yes, sir.
Q. Not locked?
A. No, sir.
Q. Did you go to the box to see what was in it?
A. Yes, sir; I did sometimes.
Q. Can you name any paper except those you saw in there?
A. Yes, sir.
Q. What?
A. Bills and receipts that we paid for her—bills that we paid for her.
Q. From whom?
A. A good many persons; sometimes it was quite full.
Q. Can you name a single person whose name was to those receipts, or any of them?
A. No, sir; I cannot.
Q. Did you ever take up this paper and look through it to see what it was after it was put in the box?
A. I think I had it several times in my hands and looked through it, but I don't know exactly the contents of it now.
Q. Did you take it up and look through it and examine it?

A. I have no particular reason for it.
Q. What the object of it was?
A. No, sir.
Q. Was that before or after Worckmeister's death?
314 A. It was after these papers were there.
Q. Was that before or after Worckmeister's death?
A. Before and after. I had that box there after his death.
Q. Did you take that paper up and examine it before or after his death?
A. I cannot state any particular times.
Q. There are two deeds there, are there not?
A. Yes, sir.
Q. Were they both in the box?
A. Yes, sir; I think they were.
Q. Did you take them both up and examine them?
A. I cannot remember, but I have seen them before.
Q. Did you take up and examine the deed to her from Phillipon and not the other?
A. I cannot remember.
Mr. O'CONNOR. We will put in evidence certified copies of the deeds to Madam Jumel of the Saratoga property—six deeds.
(Objected to by Mr. Chatfield. They were taken subject to objection. The envelopes in which the deeds were were marked by the court Exhibit 4½, 5, 6, 7, 8, and 9; April 27, 1874; S. B.)
They were as follows:
315 This indenture, made the sixteenth day of September, one thousand eight hundred and fifty-one, between John Hodgman and Zilpha Hodgman, his wife, of Saratoga Springs, county of Saratoga, and State of New York, of the first part, and Eliza B. Jumel, of the city of New York, of the second part, witnesseth that the said parties of the first part, in consideration of three thousand one hundred and eighty dollars, to them duly paid, have sold, and by these presents do grant and convey, to the said party of the second part, and to her heirs and assigns forever, all that certain piece or parcel of land situate, lying, and being in the village of Saratoga Springs aforesaid, and bounded and described as follows: Beginning at a point in the west bounds of Circular street, in said village of Saratoga Springs, one hundred and fifty feet north of the north bounds of Caroline street; thence northerly along the west bounds of Circular street one hundred and ten feet, to the southeast corner of lot No. 236 of lots which belonged to Henry Walton, late of Saratoga Springs, deceased; thence north sixty-
316 six degrees west, along the south bounds of lot No. 236, one hundred and fifty-two feet, to the easterly bounds of Hodgman street; thence along the easterly bounds of Hodgman street southerly one hundred and ten feet; thence south sixty-six degrees east one hundred and fifty-two feet to the westerly bounds of Circular street to the place of beginning, being lots No. 235, 234, and the north ten feet of lot No. 233 of lots which belonged to Henry Walton, with the appurtenances, and all the estate, right, title, and interest, dower and right of dower, of the said parties of the first part therein; and the said John Hodgman doth hereby covenant and agree to and with the said party of the second part that at the time of making this conveyance he is the lawful owner of the premises above granted, and is seized of a good and indefeasible estate of inheritance therein, and that they are free and clear of incohate dower-rights and of all incumbrances whatsoever, and the above-granted premises in the quiet and peaceable possession of the said party of the

second part, her heirs and assigns, against every person whomsoever, will warrant and forever defend.

317 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN HODGMAN. [L. S.]
ZILPHA HODGMAN. [L. S.]

Sealed and delivered in presence of (the words "dower and right of of dower" interlined before execution)
CHAS. S. LESTER.

STATE OF NEW YORK,
Saratoga County, ss :

I certify that on the twenty-seventh day of September, 1851, before me appeared John Hodgman & Zilpha Hodgman, his wife, both to me personally known to be the persons described in and who executed the foregoing deed, and severally acknowledged the execution thereof, and the said Zilpha Hodgman, on a private examination apart from her husband, acknowledged that she executed the same freely and without any fear and compulsion of her said husband.

CHARLES S. LESTER,
Justice of the Peace.

(Endorsed:) John Hodgman and wife to Eliza B. Jumel. Full covenant deed, dated the 16th day of Sept., 1851. Recorded in Sara-
318 toga County clerk's office the 29th day of September, 1851, at 2 hours & 30 minutes p. m., in book of deeds No. 60, page 369, &c.

JAMES W. HORTON, *Clerk.*

319 Know all men by these presents that we, Nelson Chase and Mary J., his wife, in consideration of one hundred dollars, lawful money of the United States of America, to us in hand paid by Eliza B. Jumel, of the city of New York, the receipt whereof we do hereby confess and acknowledge, have granted, bargained, sold, assigned, and delivered to the said Eliza B. Jumel all our and each of our right, title, and interest, dower and right and title of dower, of, in, and to the within lease, and of, in, and to the premises therein described, and every part and parcel thereof, with the appurtenances: to have and to hold the same to the said Eliza B. Jumel, her heirs and assigns, to the sole and only proper use, benefit, and behoof of the said Eliza B. Jumel, her heirs and assigns, forever, subject, nevertheless, to the rents, covenants, and conditions contained in the said lease.

And I, the said Nelson Chase, do, for myself, my heirs, executors, and administrators, covenant and agree to and with the said Eliza B. Jumel, her heirs and assigns, that the said demised premises are now free and clear from any incumbrances whatsoever, excepting
320 the said lease and the covenants therein contained; and that I, the said Nelson Chase, the said demised premises unto the said Eliza B. Jumel, her heirs and assigns, against all persons whomsoever, except as against the said lease and the covenants therein contained, shall and will warrant, and by these presents forever defend.

In witness whereof we have hereunto set our hands and seals this third day of July, in the year of our Lord one thousand eight hundred and thirty-nine.

NELSON CHASE. [L. S.]
MARY J. CHASE. [L. S.]

Sealed and delivered in presence of—

CITY AND COUNTY OF NEW YORK, *ss:*

On this 3d day of July, A. D. 1839, before me came Nelson Chase and Mary J., his wife, to me known to be the same individuals described in and who executed the foregoing or within instrument, and severally duly acknowledged before me that they executed the same, and the said Mary J., on a private examination apart from her said husband, acknowledged that she executed the same freely and without any fear or compulsion of her said husband.

JAS. T. BRADY,
Com'r of Deeds.

321 STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph Hoxie, clerk of the city and county of New York, and also clerk of the court of common pleas for the said city and county, do hereby certify that James T. Brady, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, commissioner in and for the city and county aforesaid, dwelling in the said city, commissioned and sworn, and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such commissioner, and verily believe the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 3d day of July, 1839.

[SEAL.] JOSEPH HOXIE, *Clerk.*

Recorded in Saratoga County clerk's office the 24th day of
322 July, 1839, at 11 hours and 30 minutes a. m., in book of deeds No. I J, page 182.

JAMES W. HORTON, *Clerk.*

323 Know all men by these presents that we, Marvin Holden & Triphena, his wife, in consideration of three hundred and sixty-four dollars to us in hand paid by Mary J. Chase, wife of Nelson Chase, of the city of New York, the receipt whereof we do hereby confess and acknowledge, have granted, bargained, sold, assigned, and delivered, and by these presents do grant, bargain, sell, assign, and deliver, to the said Mary J. Chase all our and each of our right, title, and interest, dower and right and title of dower, of, in, and to the within lease, and of, in, and to the premises therein described, and every part and parcel thereof, with the appurtenances, to have and to hold the same to the said Mary J. Chase, her heirs and assigns, to the sole and only proper benefit and behoof of the said Mary Chase, her heirs and assigns, forever, subject, nevertheless, to the rents, covenants, and conditions contained in the said lease.

And I, the said Marvin Holden, for myself, my heirs, executors, and administrators, do hereby covenant and agree to and with the said Mary J. Chase, her heirs and assigns, that the said demised premises
324 are now free and clear from any incumbrance whatsoever excepting the said lease, and the covenants therein contained; and that I, the said Marvin Holden, the said demised premises unto the said Mary J. Chase, her heirs and assigns, against all persons whomsoever, except as against the said lease and the covenants therein contained, shall & will warrant and by these presents forever defend.

In witness whereof we have hereunto put our hands and seals this 9th day of Sept., 1836.

MARVIN HOLDEN. [L. S.]
TRYPHENA HOLDEN. [L. S.]

In presence of—
JULIAT ELLSWORTH.

Recorded in Saratoga County clerk's office the 15th day of September, 1836, at 5 hours and minutes p. m., in book of deeds No. C C, page 280.

JAMES W. HORTON, *Clerk.*

STATE OF NEW YORK, *Saratoga, ss:*

On the tenth day of September, 1836, personally came Juliat Ellsworth, commissioner of deeds, Marvin Holden, and Tryphena, his wife, to me well known, and known by me to be the grantors described in and who executed the foregoing deed of assignment, & severally ac-
325 knowledged that they executed the same for the uses and purposes therein mentioned; and the said Tryphena, on an examination separate and apart from her husband, acknowledged that she executed the same without any fear or compulsion of her husband.

JULIAT ELLSWORTH,
Comm'r of Deeds.

326 This indenture, made the tenth day of March, in the year of our Lord one thousand eight hundred and thirty-six, between William L. F. Warren, of Saratoga Springs, and Eliza, his wife, of the first part, and Marvin Holden, of the same place, of the second part, witnesseth: That the said parties of the first part, for and in consideration of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and more especially for and in consideration of the rents, covenants, conditions, provisos, and agreements hereinafter reserved and expressed, have granted, bargained, sold, aliened, released, and confirmed, and by these presents do grant, bargain, sell, alien, release, and confirm, unto the said party of the second part, his heirs and assigns, all that certain lot of land situate in Saratoga Springs, in the county of Saratoga, and being part of a farm called the Saddler farm, which was purchased by said William of Henry Walton by deed bearing date the 16th day of October, 1832. The part hereby conveyed is bounded as follows, viz: Beginning at the northwest
327 corner of a lot of land lately sold to Seth Covelle, junior, being on the south bounds of the highway leading from Flat-Rock Spring to Saratoga Lake, and one rod south of the centre of said highway; thence westerly along the south bounds of said highway nine chains and seventy-six links; thence southerly ten chains and fifty-seven links to a stake and stones; thence easterly along the south bounds of said Saddler farm nine chains and seventy-six links to the west line of said Covelle's lot; thence along the west line of said Covelle's lot ten chains and fifty-nine links to the place of beginning, containing ten acres one rood and twenty-seven perches of land, together with all ways, profits, advantages, hereditaments whatsoever to the said premises belonging, and which, to and with the same, now are or at any time heretofore have been held, used, or accepted as part or member thereof, and the reversions and remainders, issues and profits, of all and singular the said premises, with the appurtenances, and also all the estate, right, title, interest, claim, and demand in law and equity of the said parties of the first part of,

in, and to the premises above mentioned, with the appurtenances:
328 To have and to hold the said land, hereditaments, and premises above released and confirmed unto the said party of the second part, his heirs and assigns, to the only use and behoof of the said party of the second part, his heirs and assigns, forever; and the said parties of the first part, for themselves, their heirs, executors, and administrators, the said hereby-granted premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, against all persons whomsoever, shall and will warrant and defend by these presents: Provided, that the said party of the second part, his heirs, executors, administrators, or assigns, do, on the tenth day of March, in each and every year during the continuance of this lease, pay to the said parties of the first part, their heirs, executors, administrators, or assigns, or to his or their attorney, the yearly rent of fifty-eight dollars & thirty-four cents. And if it shall happen at any time hereafter that the said yearly rent, or any part thereof, shall be behind and unpaid for the space of ten days, that then it shall and may be lawful for the said parties of the first part, their heirs, executors, administrators, & assigns, into the said premises,
329 or any part thereof, by himself or themselves, or his or their attorney, to enter and distrain, and the distress then and there found to take, seize, drive and carry away, and the same to detain and keep until the said yearly rent, or such part thereof as shall be then due, and the charges of such distress, shall be fully paid and satisfied, or at the choice of the said parties of the first part, their heirs, executors, administrators, or assigns, to sell the distress so distrained for raising the sum then due to him or them, respectively, returning the overplus (if any there be) to the owner of the distress so distrained. And if it shall appear more convenient to the said parties of the first part, their heirs, executors, administrators, or assigns, to re-enter into the premises and repossess and enjoy the same, in case the said yearly rent shall remain unpaid for ten days, then to distrain in order to obtain the payment thereof, in that case it shall be lawful for the said parties of the first part, their heirs, executors, administrators, or assigns, or his or their attorney, into the premises hereby granted, or any part thereof,
330 in the name of the whole, to re-enter and the same to have again, repossess, and enjoy, as and for his and their former estate, anything herein contained to the contrary notwithstanding. And the said party of the second part, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant and agree to and with the said parties of the first part, their heirs, executors, administrators, and assigns, that he or they shall and will pay to the said parties of the first part, their heirs, executors, administrators, or assigns, the rent above reserved, at the times hereinabove limited for the payment thereof, and that the party of the second part will pay all taxes, charges, and assessments which may hereafter be assessed on the premises. And the said William doth further agree that on the payment of all arrears of rent, and the sum of eight hundred and thirty-three dollars & fifty cents, by the said Marvin, he will release to said Marvin the said premises, and all rent reserved thereon. Provided the said Marvin shall
331 pay said arrears of rent and said eight hundred and thirty-three dollars and fifty cents within ten years from this date. This lease is also on condition that the said Marvin shall open the said highway, at least half a rod from the south bounds of the same, along the said premises, if the said William requests him so to do; and shall also erect a dwelling-house on said premises within eighteen months.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

WM. L. F. WARREN. [L. S.]
MARVIN HOLDEN. [L. S.]
ELIZA WARREN. [L. S.]

Signed, sealed, & delivered in presence of—
D. A. BEACH.

STATE OF NEW YORK,
Saratoga, ss:

On the 28th day of April, 1836, personally appeared before me William L. F. Warren, and Eliza, his wife, and Marvin Holden, to me known to be the persons described in and who executed the within
332 conveyance, and severally acknowledged that they executed the same; and the said Eliza, on a private examination, separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily, and without any fear or compulsion of her said husband.

W. A. BEACH,
Commr. of Deeds.

(Endorsed:) William L. F. Warren & Eliza, his wife, to Marvin Holden. Lease.

SARATOGA COUNTY,
Clerk's Office, ss:

I certify that this conveyance is recorded in said office in book of deed' C C, page 279, &c., on the 15th day of September, 1836, at 5 o'clock p. m.

A. GOODRICH, *Clerk.*

Assignment. Nelson Chase & wife to Eliza B. Jumel. Recd. for record July 24, 1839, at 11 h. 30 m. a. m., and recorded in deed-book I J, page 162, &c.

A. GOODRICH, *Clerk.*

§ "95 asst. paid—2.25 paid.
Recd. for record Sept. 15, 1836, at 5 h. p. m.

333 This indenture, made the 21st day of August, 1850, between Wm. L. F. Warren, of Saratoga Springs, counsellor at law, and Eliza, his wife, of the first part, and Eliza B. Jumel, of the city of New York, of the second part: Whereas the said Wm. L. F. Warren, & Eliza, his wife, by indenture bearing date March 10th, 1836, recorded in the clerk's office of Saratoga County, in Book of Deed' C C, page 279, &c., did convey in fee to Marvin Holden "all that lot of land situate in Saratoga Springs, in the county of Saratoga, being part of a farm called the Sadler farm, which was purchased by said Warren of Henry Walton, by deed bearing date the 16th day of October, 1832, bounded as follows: Beginning at the northwest corner of a lot of land formerly sold by said Warren to Seth Covell, jun'r, being in the south bounds of the highway leading from Flat Rock Spring to Saratoga Lake, and one rod south of the centre of said highway; thence running westerly along the south bounds of said highway nine chains and seventy-six links; thence southerly ten chains and fifty-seven links to a stake and stone; thence easterly along the south bounds of the Sadler farm nine chains

334 and seventy-six links, to the west line of said Covell's lot; thence along the west line of said Covelle's lot ten chains and fifty-nine links to the place of beginning, containing ten acres one rood and twenty-seven perches of land. To have and to hold the same to the said Marvin Holden, his heirs and assigns, forever, subject to the conditions of said indenture, and to the payment of the yearly rent of fifty-eight dollars and thirty-four cents, on the tenth day of March, in each and every year during the continuance of said indenture, with a covenant by the said Warren that on the payment of all arrears of rent, and the sum of eight hundred and thirty-three dollars & fifty cents, by the said Marvin, he, the said Warren, would release to said Marvin the said premises, and all rent reserved thereon, which lease also provided that the said Marvin should open the said highway, at least half a rod from the south bounds thereof, if the said Warren should request him so to do, as by the said indenture, to which reference is made for a more particular description of its contents, as the record thereof, will more fully appear.

335 And whereas the said indenture, and the premises therein described, have been assigned to the said Eliza B. Jumel, who has paid to the said Wm. L. F. Warren all rent of the said premises reserved by the said indenture, and also the further sum of eight hundred and thirty-three dollars and fifty cents:

Now, therefore, this indenture witnesseth that the said parties of the first part to this indenture, in consideration of the premises, and of the payment of said rent, and of the said sum of eight hundred and thirty-three dollars and fifty cents, the receipt whereof is hereby acknowledged, have, and by these presents do hereby, forever release and discharge the said premises, and the said Eliza B. Jumel, her heirs and assigns, of and from all rent reserved by the said in part recited indenture. And the said parties of the first part to this indenture do hereby remise, release, and quit-claim unto the said Eliza B. Jumel, and to her heirs and assigns forever, all their right, title, and interest, rent, claim, dower, and demand of, in, and to the said premises, with the appurtenances thereunto belonging. To have and to hold the same forever, free

336 and clear and discharged of and from the said rent, unto the said Eliza B. Jumel, her heirs and assigns, and to her and their only proper use, benefit, and behoof, forever.

Witness our hands and seals the day and year first above written.

WM. L. F. WARREN. [L. S.]
ELIZA WARREN. [L. S.]

Sealed and delivered in presence of—
JOHN T. CARR.

STATE OF NEW YORK AND
County of Saratoga, ss:

On this 21st day of August, and year of our Lord eighteen hundred and fifty, before me personally came William L. F. Warren and Eliza, his wife, and severally acknowledged that they had executed the within conveyance, and the said Eliza, on a private examination apart from her husband, acknowledged that she executed the said conveyance freely and without any fear or compulsion of her husband: and I further certify that I know the persons who made the said acknowledgement to be the same individuals described in and who executed the said conveyance.

JOHN T. CARR,
Justice of the Peace.

337 (Endorsed:) Wm. L. F. Warren & Eliza, his wife, to Eliza B. Jumel. Release.

Recorded in Saratoga County clerk's office the 23d day of August, 1850, at 6 hours p. m., in Book of Deeds No. 58, page 197, &c.

JAMES W. HORTON, *Clerk.*

338 Know all men by these presents that I, Nelson Chase, in consideration of one hundred dollars to me in hand paid by Eliza B. Jumel, of the city of New York, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, and delivered, and by these presents do grant, bargain, sell, assign, and deliver, to the said Eliza B. Jumel, all my right, title, and interest in and to the lease hereunto annexed and to the premises therein described and every part and parcel thereof, together with the appurtenances, to have and to hold the same to the said Eliza B. Jumel, her heirs and assigns, to the sole and only use, benefit, and behoof of the said Eliza B. Jumel, her heirs and assigns, forever, subject, nevertheless, to the rents, covenants, and conditions contained in the said lease.

And the said Nelson Chase, for himself, his heirs, executors, and administrators, doth hereby covenant and agree to and with the said Eliza B. Jumel, her heirs and assigns, that the said demised premises are now free and clear from all incumbrances whatsoever, except the said lease and incumbrances therein mentioned; and the said Nelson Chase
339 the said demised premises, subject to the said lease and the incumbrances therein mentioned, unto the said Eliza B. Jumel, her heirs and assigns, against all persons whatsoever, shall and will warrant and defend by these presents.

In witness whereof I have hereunto set my hand and seal the third day of July, in the year of our Lord one thousand eight hundred and thirty-nine.

NELSON CHASE. [L. S.]

Sealed and delivered in the presence of—
WILLIAM S. SEARS.

STATE OF NEW YORK,
City and County of New York:

On the 3d day of July, 1839, before me came Nelson Chase, known to me to be the individual described in and who executed the foregoing conveyance, and duly acknowledged before me that he executed the same for the uses and purposes therein mentioned; all which I certify.

WILLIAM S. SEARS,
Commr. of Deeds.

STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph Hoxie, clerk of the city and county of New York,
340 and also clerk of the court of common pleas for the said city and county, do hereby certify that Wm. S. Sears, whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument and therein written, was, at the time of taking such proof or acknowledgement, a commissioner in and for the city and county aforesaid, dwelling in said city, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of said commissioner, and verily believe the signature to the said certificate of proof or acknowledgement is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 3d day of July, 1839.

[SEAL.] JOSEPH HOXIE, *Clerk.*

341 Know all men by these presents that we, William Lord, junior, and Sarah Ann, his wife, and Charles S. Stearns, in consideration of one hundred and forty dollars to us in hand paid by Nelson Chase, of the city of New York, the receipt whereof is hereby confessed, have granted, bargained, sold, assigned, and delivered, and by these presents do grant, bargain, sell, assign, and deliver, to the said Nelson Chase, all our and each of our right, title, and interest of, in, and to the lease hereunto annexed and to the premises therein *sub*scribed and every part and parcel thereof, together with the appurtenances: To have and to hold the same to the said Nelson Chase, his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said Nelson Chase, his heirs and assigns, forever, subject, nevertheless, to the rents, covenants, and conditions contained in the said lease.

And the said William Lord, junr., and Charles S. Stearns, for themselves, their heirs, executors, and administrators, do hereby jointly and severally covenant and agree to and with the said Nelson Chase, his heirs and assigns, that the said demised premises are now free and
342 clear from all incumbrances whatsoever, except the said lease and the incumbrances therein mentioned, and that the said William and Charles the said demised premises, subject to the said lease and the incumbrances therein mentioned, unto the said Nelson Chase, his heirs and assigns, against all persons whatsoever, shall and will warrant and forever defend by these presents.

In witness whereof we have hereunto put our hands and seals this seventh day of September, 1836.

WM. LORD, JR. [L. S.]
SARAH ANN LORD. [L. S.]
CHAS. S. STEARNS. [L. S.]

Signed, sealed, and delivered in presence of—
WM. L. F. WARREN.

SARATOGA COUNTY,
Clerk's Office, ss:

I certify that this conveyance is recorded in said office, in book of deeds C C, page 281, on the 15th day of September, 1836, at 5 o'clock p. m.

A. GOODRICH, *Clerk.*

STATE OF NEW YORK,
Saratoga County, ss:

On the 7th day of September, 1836, before me, Juliat Ellsworth, commissioner of deeds, personally came William Lord, junior, and
343 Sarah Ann, his wife, and Charles Stearns, severally to me well known, and known by me to be the grantors described in and who executed the within deed, and severally acknowledged they did the same for the purposes and uses therein mentioned; and the said Sarah Ann, on a private examination, separate and apart from her husband, acknowledged that she did the same without any fear or compulsion of her husband.

JULIAT ELLSWORTH,
Commr. of Deeds.

SARATOGA COUNTY, *ss:*

On this eleventh day of November, 1835, personally appeared before me William L. F. Warren and Eliza, his wife, and William Lord, junior, and Charles S. Stearns, to me known to be the individuals described in and who executed the within conveyance, and severally that they executed the same for the uses and purposes therein mentioned; and the said Eliza, on a private examination before me, separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily, and without any fear or compulsion of her said husband.

W. A. BEACH,
Commr. of Deeds.

344 This indenture, made the eleventh day of November, in the year of our Lord one thousand eight hundred and thirty-five, between William L. F. Warren and Eliza, his wife, of Saratoga Springs, in the county of Saratoga, of the first part, and William Lord, junior, and Chas. S. Stearns, of the town and county aforesaid, of the second part, witnesseth, that the said parties of the first part, for and in consideration of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, and more especially for and in consideration of the rents, covenants, conditions, provisos, and agreements hereinafter reserved and expressed, have granted, bargained, sold, aliened, released, and confirmed, and by these presents do grant, bargain, sell, alien, release, and confirm unto the said parties of the second part, their heirs and assigns, all that certain lot of land situate in Saratoga Springs, in the county of Saratoga, and being part of a farm called the Sadler farm, which was purchased by said Wm. L. F. Warren by deed from Henry Walton, dated the 16th day of October, 1832. The part hereby conveyed is described as follows: Begin-
345 ning in the corner of the road, at the northeast corner of a lot lately sold by said Warren to Jason Andrews; thence south, along the east line of said Jason's lot, to the south line of the said Sadler farm; thence along the south line of the said Sadler farm east a sufficient distance to run a north and south line northerly to the highway leading from Flat Rock Spring to Saratoga Lake, and embrace between said north and south line and said Andrews' east line five acres of land. Said north and south line is to be run at right angles with said highway; thence westerly, along the south line of said highway, to the place of beginning.

Together with all ways, profits, advantages, and hereditaments whatsoever to the said premises belonging, and which the same now are, or at any time heretofore have been, held, used, or accepted as part or number thereof, and the reversions and remainders, issues and profits of all and singular the said premises with the appurtenances, and also all the estate, right, title, interest, claim, and demand in law and equity of the said parties of the first part in and to the premises above mentioned, with the appurtenances. To have and to hold the
346 said land, hereditaments, and premises above released and confirmed unto the said parties of the second part, their heirs and assigns, to the only use and behoof of the said parties of the *said parties of the* second part, their heirs and assigns forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, the said hereby-granted premises, with the appurtenances, unto the said parties of the second part, their heirs and assigns, against all persons whatsoever, shall and will warrant and defend by these presents: Provided, that the said parties of the second part, their

heirs, executors, administrators, or assigns, do, on the first day of October in each and every year during the continuance of this lease, pay to the said parties of the first part, their heirs, executors, and administrators, or assigns, or to his or their attorney, the yearly rent of thirty-five dollars, lawful money of the United States. And if it shall happen at any time hereafter that the said yearly rent, or any part thereof, shall be behind and unpaid for the space of ten days, that then it shall and may be lawful for the said parties of the first part, their
347 heirs, executors, administrators, and assigns, into the said premises or any part thereof, by himself or themselves, or his or their attorney, to enter and distrain, and the distress then and there found, to take, seize, drive, and carry away, and the same to detain and keep, until the said yearly rent, or such part thereof as shall be then due, and the charges of such distress shall be fully paid and satisfied, or, at the choice of the said parties of the first part, their heirs, executors, administrators, or assigns, to sell the distress so distrained for the raising the sum then due to him or them, respectively, returning the overplus (if any there be) to the owner of the distress so distrained; and if it shall appear more convenient to the said part' of the part, their heirs, executors, administrators, or assigns, to re-enter into the premises and repossess and enjoy the same, in case the said yearly rent shall remain unpaid for ten days, than to distrain in order to obtain the payment thereof, in that case it shall be lawful for the said parties of the first part, their heirs, executors, administrators, or assigns, or his or their attorney, into the premises hereby granted, or any
348 part thereof, in the name of the whole, to re enter, and the same to have again, repossess, and enjoy, as and for his and their former estate, anything herein contained to the contrary notwithstanding. And the said parties of the second part, for themselves, their heirs, executors, administrators, and assigns, do hereby covenant and agree to and with the said parties of the first part, their heirs, executors, administrators, and assigns, that he and they shall and will pay yearly to the said parties of the first part, their heirs, executors, administrators, and assigns, the rent above reserved at the times herein above limited for the payment thereof, and that he or they will pay all taxes, charges, and assessments which may hereafter be assessed on the premises. The above covenants of warranty are not to be extended to make the said Warren liable for any lands hereby conveyed which are now used as highways, but the same may still be used as highways. And the said William L. F. Warren doth agree to receive the sum of five hundred dollars and all back rent to the day of payment any time within ten years and release the above rent. And the said parties of the second part do agree with said Warren to al-
349 low the said highway to be widened and opened on their said five acres to the same extent that the said Warren shall open and widen the same on the opposite side. And the said Warren is to have the right to harvest the east half of the crop now growing on said five acres to his own use.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

WM. L. F. WARREN. [L. S.]
ELIZA WARREN. [L. S.]
WILLIAM LORD, JR. [L. S.]
CHAS. S. STEARNS. [L. S.]

Signed, sealed, and delivered in presence of—(the words "east half of the" being first inserted)
JAMES M. ANDREWS.

(Endorsed:) Wm. L. F. Warren & Eliza, his wife, to William Lord, jr., and Charles S. Stearns. Counterpart of lease.

SARATOGA COUNTY,
Clerk's Office, ss:

I certify that this conveyance is recorded in said office in book of deeds A A, page 489, &c., on the 16th day of November, 1835, at 4 o'clock p. m.

A. GOODRICH, *Clerk.*

$1.65 p'd; $ .65 (ass't) p'd.
Rec'd for record Nov. 16, 1835, at 4 p. m.
350 Nelson Chase to Eliza B. Jumel, assignment.

SARATOGA COUNTY,
Clerk's Office, ss:

I certify that this conveyance is recorded in said office in book of deeds I J, page 183, &c., on the 24th day of July, 1839, at 11 o'clock and 30 min. a. m.

A. GOODRICH, *Clerk.*

$ .85 paid.
Rec'd for record July 24, 1839, at 11 h. 30 min. a. m.

351 This indenture, made the eleventh day of November, in the year of our Lord one thousand eight hundred and thirty-five, between William L. F. Warren and Eliza, his wife, of Saratoga Springs, in the county of Saratoga, of the first part, and William Lord, junior, and Charles S. Stearns, of the town and county aforesaid, of the second part, witnesseth, that the said parties of the first part, for and in consideration of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is here*of* acknowledged, and more especially for and in consideration of the rents, covenants, conditions, promises, and agreements hereinafter reserved and expressed, have granted, bargained, sold, aliened, released, and confirmed, and by these presents do grant, bargain, sell, alien, release, and confirm unto the said parties of the second part, their heirs and assigns, all that certain lot of land situate in Saratoga Springs in the county of Saratoga, and being part of a farm called the Sadler farm, which was purchased by said Wm. L. F. Warren by deed from Henry Walton, dated the 19th day of October, 1832. The part hereby conveyed is described as follows:

352 Beginning in the corner of the road at the northeast corner of a lot lately sold by said Warren to Jason Andufs; thence south along the east line of said Jason's lot, to the south line of the said Sadler farm; thence along the south line of said Sadler farm east a sufficient distance to run a north and south line northerly to the highway leading from Flat Rock Spring to Saratoga Lake and embrace between said north and south line and said Andufs' east line five acres of land. Said north and south line is to be run at right angles with said highway; thence westerly along the south line of said highway to the place of beginning, together with all ways, profits, advantages, and heredita-

ments whatsoever to the said premises belonging, and which to and with the same now are, or at any time heretofore have been held, used, or accepted as part or member thereof, and the reversions and remainders, issues and profits of all and singular the said premises, with the appurtenances; and also all the estate, right, title, interest, claim, and demand in law and equity, of the said parties of the first part of, in, and
353 to the premises above mentioned, with the appurtenances, to have and to hold the said land, hereditaments, and premises above released and confirmed unto the said parties of the second part, their heirs and assigns, to the only use and behoof of the said parties of the second part, their heirs and assigns, forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, the said hereby-granted premises, with the appurtenances, unto the said parties of the second part, their heirs and assigns, against all persons whatsoever, shall and will warrant and defend by these presents; provided that the said parties of the second part, their heirs, executors, administrators or assigns, do on the first day of October in each and every year during the continuance of this lease, pay to the said parties of the first part, their heirs, executors, administrators or assigns, or to his or their attorney, the yearly rent of thirty-five dollars. And if it shall happen at any time hereafter that the said yearly rent or any part thereof shall be behind and unpaid for the space of ten days, that then it shall and may be lawful for the said parties of the first
354 part, their heirs, executors, administrators, and assigns, into the said premises, or any part thereof, by himself or themselves, or his or their attorney, to enter and distrain, and the distress then and there found, to take, seize, drive, and carry away, and the same to detain and keep, until the said yearly rent or such part thereof as shall be then due and the charges of such distress shall be fully paid and satisfied, or at the choice of the said parties of the first part, their heirs, executors, and administrators or assigns, to sell the distress so distrained, for the raising of the sum then due to him or them respectively, returning the overplus (if any there be) to the owner of the distress so distrained. And if it shall appear more convenient to the said parties of the first part, their heirs, executors, administrators, or assigns, to re-enter into the premises and repossess and enjoy the same, in case the said yearly rent shall remain unpaid for ten days, than to distrain in order to obtain the payment thereof, in that case it shall be lawful for the said parties of the first part, their heirs, executors, administrators, or assigns, or his or their attorney, into the premises hereby granted, or any part thereof, in the name of the whole to re-enter and the same to
355 have again, repossess, and enjoy, as and for his and their former estate, anything herein contained to the contrary notwithstanding. And the said parties of the second part, for themselves, their heirs, executors, administrators, and assigns, do hereby covenant and agree to and with the said parties of the first part, their heirs, executors, administrators, and assigns, that he or they shall and will pay yearly, to the said parties of the first part, their heirs, executors, administrators, or assigns, the rent above reserved, at the times hereinabove limited for the payment thereof, and that he or they will pay all taxes, charges, and assessments which may hereafter be assessed on the premises. The above covenants of warranty are not to be extended to make the said Warren liable for any lands hereby conveyed which are now used as highways, but the same may still be used as highways; and the said William L. F. Warren doth agree to receive the sum of five hundred dollars, and all back rent, to the day of payment, any time within ten years, and release

the above rent; and the said parties of the second part do agree,
356 with said Warren, to allow the said highway to be widened and opened on their said five acres to the same extent that the said Warren shall open and widen the same on the opposite side; and the said Warren is to have the right to harvest the east half of the crop now growing on said five acres to his own use.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

WILLIAM LORD, JR. [L. S.]
CHAS. S. STEARNS. [L. S.]
WM. L. F. WARREN. [L. S.]
ELIZA WARREN. [L. S.]

Signed, sealed, and delivered in presence of—the words "L. F. Warren & still" being first interlined; also the words "east half of the"—
JAMES M. ANDREWS.

SARATOGA COUNTY, *ss:*

On this eleventh day of November, 1835, personally appeared before me William L. F. Warren and Eliza, his wife, and William Lord, junior, and Charles S. Stearns, to me known to be the individuals described in and who executed the within conveyance, and severally acknowledged that they executed the same for the uses and purposes therein mentioned; and the said Eliza, on a private examination
357 before me, separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily, and without any fear or compulsion of her said husband.

W. A. BEACH,
Comr. of Deeds.

Know all men by these presents that we, Wm. L. F. Warren and Eliza, his wife, in consideration of five hundred dollars to us in hand paid by Cynthia M. Beach, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, & deliver to the said Cynthia M. Beach all our and each of our right, title, and interest of, in, and to the within lease, and to the rents therein reserved, to have and to hold the same to the said Cynthia M. Beach, her heirs and assigns forever; and the said Cynthia M. Beach is hereby authorized to collect and receive the said rents reserved in and by the said lease to her own proper use, benefit, and behoof forever.

In witness whereof we have hereunto put our hands and seals this ninth day of December, in the year one thousand eight hundred and forty-five.

WM. L. F. WARREN. [L. S.]
ELIZA WARREN. [L. S.]

Signed, sealed, and delivered in presence of—
F. HOAG.

358 STATE OF NEW YORK,
Saratoga County, ss:

On this 13th day of December, 1845, personally came before me Wm. L. F. Warren and Eliza, his wife, whom I know to be the persons in and who executed the above assignment, and they severally acknowledged that they executed the same; and the said Eliza, being examined by me, separate and apart from her said husband, acknowledged that

she executed the same freely and without any fear or compulsion of her said husband.

F. HOAG,
Justice of the Peace.

Recorded in Saratoga County clerk's office, in book number 58 of deeds, page 198, on the 23d day of August, 1850, at 6 h. p. m.
JAMES W. HORTON, *Clerk.*

In consideration of the sum of five hundred and twenty-four dollars and forty-eight cents to me in hand this day paid by Eliza Jumel, of the city of New York, I do hereby release and discharge the rents reserved by the within indenture upon the premises within described, and do hereby sell, assign, and transfer unto the said Eliza all my
359 right and interest of, in, and to the within lease, as well by my title and interest in and to the land therein described by virtue of said lease.

C. M. BEACH. [L. S.]

Sealed & delivered August 21, 1850, in presence of—
J. R. PLUNKETT.

SARATOGA COUNTY, *ss:*

On this twenty-first day of August, 1850, personally appeared before me Cynthia M. Beach, to me known to be the person described in and who executed the foregoing lease and assignment, and acknowledged that she executed the same.

I. R. PLUNKETT,
Justice of the Peace.

(Endorsed:) Wm. L. F. Warren and Eliza, his wife, to Wm. Lord, junior, and Charles S. Stearns. Lease. $35, rent. Eliza Jumel.

Recorded in Saratoga County clerk's office the 23d day of August, 1850, at 6 hours p. m., in book of deeds No. 58, page 194, &c.
JAMES W. HORTON, *Clerk.*

360 Wm. L. F. Warren & wife to Cynthia M. Beach, asst. of case.
Recorded in Saratoga County clerk's office this 23d day of August, 1850, at 6 hours p. m., in book of deeds No. 58, page 196.
JAMES W. HORTON, *Clerk.*

361 Whereas, on the eleventh day of November, one thousand eight hundred and thirty-five, William L. F. Warren and Eliza, his wife, of Saratoga Springs, in the county of Saratoga, executed and delivered to William Lord, junior, and Charles S. Stearns, of the same place, a lease in perpetuity of a certain lot of land situate in Saratoga Springs aforesaid, in said lease more particularly described, in and by which said lease an annual rent of thirty-five dollars was reserved, payable to the said William L. F. Warren & wife, their heirs, executors, administrators, or assigns.

And whereas, on the ninth day of December, one thousand eight hundred and forty-five, the said William L. F. Warren & wife, by writing under their hands and seals, duly assigned to Cynthia M. Beach, of Saratoga Springs aforesaid, their right, title, and interest to the said lease, and to the rent therein reserved, to have and to hold to her and her heirs and assigns forever.

And whereas Eliza Jumel of the city of New York, has become the owner of the lands in said lease described, subject to said rent,
362 the lessee under such lease by assignment.

Now, therefore, in consideration of the sum of five hundred and twenty-four dollars and forty-eight cents, to me paid by the said Eliza Jumel, I, the said Cynthia M. Beach, do hereby release and discharge the said rent reserved in and by said lease, and hereby assign and transfer to the said Eliza all my right, title, and interest, under and by virtue of said lease and assignment of, in, and to the premises therein described.

Witness my hand and seal this twenty-first day of August, one thousand eight hundred and fifty.

C. M. BEACH. [L. S.]

Sealed and delivered in presence of—
W. A. BEACH.

SARATOGA COUNTY, *ss:*

On this 22d day of August, 1850, personally appeared before me Cynthia M. Beach, to me known to be the person described in and who executed the within instrument, and acknowledged that she executed the same.

JOHN T. CARR,
Justice of the Peace.

363 (Endorsed:) Cynthia M. Beach to Eliza B. Jumel. Release.

Recorded in Saratoga County clerk's office the 23d day of August, 1850, at 6 hours p. m., in book of deeds No. 58, page 196, &c.

JAMES W. HORTON, *Clerk.*

364 This indenture, made the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and thirty-six, between William L. F. Warren, of Saratoga Springs, in the county of Saratoga, counsellor at law, and Eliza, his wife, of the first part, and Eliza B. Jumel, of the city of New York, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of five thousand five hundred and fifty dollars of good and lawful money of the United States to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part, in her actual possession now being, and to her heirs and assigns forever, all that certain lot, piece, or parcel of land situate in the said town of Saratoga Springs, and being part of a farm lately purchased by said William of Henry Walton, described as follows: Beginning at the southeast corner of a lot
365 lately sold by said William to Daniel McLaren; thence along the centre of the road leading from Flat Rock Spring to Saratoga Lake, easterly thirty-three chains and sixty-nine links to the southwest corner of a lot lately sold by said William to Garrit G. Lansing; thence north along the west line of said Lansing lot to the west line of a lot belonging to Henry H. & R. Lamence, sixteen chains and thirty-four links to other lands belonging to said Lamences; thence west along the south line of said Lamence's land, thirty-three chains and sixty-nine links to a pitch-pine tree marked on three sides, and being the southeast

corner of John R. Ricard's lot; thence south sixteen chains and thirty-four links to the place of beginning; subject, nevertheless, to the right the public now have to use the said highway as a public road, containing fifty-five acres and an half acre of land. The above deed from said Walton is recorded in the clerk's office of Saratoga County, in book of deeds W, pages 95, 96, 97. Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders,
366 rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand, whatsoever, of the said party of the first part, either in law or equity, of, in, and to the above-bargained premises, with the said hereditaments and appurtenances: to have and to hold the said premises above particularly mentioned and described to the said party of the second part, her heirs and assigns, to the sole and only proper use, benefit, and behoof of the party of the second part, her heirs and assigns forever; and the said party of the first part, for himself and his heirs, executors, and administrators, doth covenant, grant, promise, and agree to and with the said party of the second part, her heirs and assigns, the above-bargained premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, against all and every persons lawfully or equitably claiming or to claim, the whole or any part thereof, will forever warrant and defend.

In witness whereof the said party of the first part have set their hands and seals the day and year first above written.

WILLIAM L. F. WARREN. [L. S.]
367 ELIZA WARREN. [L. S.]

Sealed and delivered in the presence of—
W. A. BEACH.

SARATOGA, *ss:*

On this twenty-ninth day of August, one thousand eight hundred and thirty-six, personally appeared before me William L. F. Warren and Eliza, his wife, to me known to be the individuals described in and who executed the within conveyance, and severally acknowledged that they executed the same; and the said Eliza, on a private examination before me, separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily, and without any fear or compulsion of her said husband.

W. A. BEACH,
Comr. of Deeds.

I certify the foregoing to be a true copy of the original, with the certificate of acknowledgment thereof.

Recorded August 30, 1836, at 11 h. a. m.

A. GOODRICH, *Clerk.*

Book of deeds C C, page 224.

SARATOGA COUNTY,
Clerk's Office, ss:

368 I, James W. Horton, clerk of the county of Saratoga, certify that I have compared the preceding copy of deed with the original record thereof remaining in this office, and that the same is a correct transcript therefrom, and the whole of the said original record.

In witness whereof I have hereunto subscribed my name and affixed the seal of said county this 2d day of September, 1859.

JAMES W. HORTON, *Clerk.*

(Endorsed :) Wm. L. F. Warren and Eliza, his wife, to Eliza B. Jumel. Certified copy deed.

369 This indenture, made the twelfth day of March, in the year of our Lord one thousand eight hundred and thirty-six, between William L. F. Warren, of Saratoga Springs, and Eliza, his wife, of the first part, and Ezra Hall, of the same place, of the second part, witnesseth, that the said parties of the first part, for and in consideration of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and more especially for and in consideration of the rents, covenants, conditions, provisos, and agreements hereinafter reserved and expressed, have granted, bargained, sold, aliened, released, and confirmed, and by these presents do grant, bargain, sell, alien, release, and confirm unto the said party of the second part, his heirs and assigns, all that certain lot of land situate in Saratoga Springs, in the county of Saratoga, and being part of a farm called the Sadler farm, which was purchased by said William of Henry Walton, by deed bearing date 16th Oct., 1832. The part hereby conveyed is bounded as follows, viz : Beginning at the northwest corner of a lot of land
370 lately sold or leased by said William to Marvin Holden; running thence westerly along the south bounds of the highway leading from Flat Rock Spring to Saratoga Lake ten chains & thirty links to the northeast corner of a lot belonging to William Lord and Charles Stearns; thence southerly along the east line of said Lord & Stearns lot, nine chains and seventy-one links, to the south bounds of the Saddler farm aforesaid; thence along the south bounds of the said Sadler farm, easterly nine chains and fourteen links, to the lot of Marvin Holden; thence along the west line of said Holden's lot ten chains and fifty-seven links, to the place of beginning, containing nine acres three roods and sixteen perches of land; said highway is two rods wide; together with all ways, profits, advantages, hereditaments, whatsoever, to the said premises belonging, and which to and with the same now are, or at any time heretofore have been held, used, or accepted as part or member thereof, and the reversions and remainders, issues and profits of all and singular the said premises with the appurtenances, and also all the estate, right, title, interest, claim, and demand in law and
371 equity of the said parties of the first part, of, in, and to the premises above mentioned, with the appurtenances; to have and to hold the said land, hereditaments, and premises above released and confirmed unto the said party of the second part, his heirs and assigns, to the only use and behoof of the said party of the second part, his heirs and assigns, forever. And the said parties of the first part, for themselves, their heirs, executors, and administrators, the said hereby granted premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, against all persons whatsoever shall and will warrant and defend by these presents.

Provided that the said party of the second part, his heirs, executors, administrators, or assigns do, on the first day of April in each and every year during the continuance of this lease, pay to the said parties of the first part, their heirs, executors, administrators, or assigns, or to his or their attorney, the yearly rent of fifty-eight dollars and sixty cents; and if it shall happen at any time hereafter that the said yearly rent, or any

part thereof, shall be behind and unpaid for the space of ten days,
372 that then it shall and may be lawful for the said parties of the first part, their heirs, executors, administrators, and assigns, into the said premises, or any part thereof, by himself or themselves, or his or their attorney, to enter and distrain and the distress then and there found to take, seize, drive, and carry away, and the same to detain and keep until the said yearly rent, or such part thereof as shall be then due, and the charges of such distress, shall be fully paid and satisfied, or at the choice of the said parties of the first part, their heirs, executors, administrators, or assigns, to sell the distress so destrained for the raising the sum then due to him or them, respectively, returning the overplus (if any there be) to the owner of the distress so distrained; and if it shall appear more convenient to the said parties of the first part, their heirs, executors, or assigns, to re-enter into the premises and repossess and enjoy the same, in case the said yearly rent shall remain unpaid for ten days, than to distrain in order to obtain the payment thereof, in that case it shall be lawful for the said parties of the first part, their
373 heirs, executors, administrators, or assigns, or his or their attorney, into the premises hereby granted, or any part thereof, in the name of the whole, to re-enter and the same to have again, repossess, and enjoy, as and for his and their former estate, anything herein contained to the contrary notwithstanding; and the said party of the second part, for himself, his heirs, executors, administrators, and assigns, doth hereby covenant and agree to and with the said parties of the first part, their heirs, executors, administrators, and assigns, that he or they shall and will pay to the said parties of the first part, their heirs, executors, administrators, or assigns, the rent above reserved, at the time hereinabove limited for the payment thereof, and that the party of the second part will pay all taxes, charges, and assessments which may hereafter be assessed on the premises; and the said William doth further agree that on the payment of all rent, and the sum of eight hundred & thirty-seven dollars and twenty-five cents, by the said Ezra to the said William, within ten years from this date, he, the said William, will release to the said Ezra the said premises free of rent.

374 This lease is also on condition that the said Ezra shall open the said highway at least half a rod from the south bounds thereof along the said premises, if the said William shall request him so to do, and shall also erect a dwelling-house on said premises within two years.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

WM. L. F. WARREN. [L. S.]
ELIZA WARREN. [L. S.]
EZRA HALL. [L. S.]

Signed, sealed, and delivered in presence of—
The words "within ten years from this date" prior interlined.
W. A. BEACH.

STATE OF NEW YORK, *Saratoga, ss:*

On this 28th day of April, 1836, personally appeared before me William L. F. Warren and Eliza, his wife, and Ezra Hall, to me known to be individuals described in and who executed the within conveyance, and severally acknowledged that they executed the same for the uses and purposes therein mentioned; and the said Eliza, on a private examination, separate and apart from her said husband, acknowledged

375 that she executed the same freely and voluntarily, and without any fear or compulsion of her said husband.

W. A. BEACH,
Commr. of Deeds.

(Endorsed:) Wm. L. F. Warren & Eliza, his wife, to Ezra Hall. Lease.

SARATOGA COUNTY, *Clerk's Office, ss:*

I certify that this conveyance is recorded in his said office, in book of deeds C C, page 62, &c., on the 21' day of June, 1836, at 5 o'clock & 20 min. p. m.

A. GOODRICH, *Clerk.*

$1.55. Received for record June 21, 1836, at 5 h. 20 min. p. m.

376 This indenture, made the ninth day of September, in the year one thousand eight hundred and thirty-six, between Ezra Hall, of Saratoga Springs, and Martha, his wife, of the first part, and Mary J. Chase, wife of Nelson Chase, esquire, of the city of New York, of the second part, witnesseth:

Whereas, by a certain lease in fee, dated on the 12th day of March, 1836, and recorded in the clerk's office of the county of Saratoga, in book of deeds C C, page 62, &c., Wm. L. F. Warren and Eliza, his wife, did convey to the said Ezra Hall, on the conditions and covenants in said lease contained, all that certain lot of land situate in said town, and being part of a farm called the Sadler farm, which was purchased of said William of Henry Walton, by deed dated 16th Oct., 1832, which part so conveyed was therein bounded as follows: Beginning at the northwest corner of a lot of land lately sold or leased by said William to Marvin Holden, running thence westerly along the south bounds of the highway leading from Flat Rock Spring to Saratoga Lake ten chains and thirty links, to the northeast corner of a lot belong-
377 ing to William Lord and Charles Stearns; thence southerly along the east line of said Lord & Stearns' lot nine chains and seventy-one links, to the south bounds of the Sadler farm aforesaid; thence along the south bounds of the said Sadler farm, easterly, nine chains and fourteen links to the lot of Marvin Holden; thence along the west line of said Holden's lot ten chains and fifty-seven links, to the place of beginning; containing nine acres three roods and sixteen perches of land.

And whereas the said Ezra hath this day sold said premises to the said Mary J. Chase: Now, therefore, this indenture witnesseth that the said parties of the first part, in order to carry into effect the said sale, and in consideration of the sum of six hundred and eighty dollars and seventy-five cents, to them in hand paid by the said Mary J. Chase, the receipt whereof is hereby confessed, have granted, bargained, sold, assigned, and delivered, and by these presents do grant, bargain, sell, assign, and deliver unto the said Mary J. Chase, all the right,
378 title, and interest, dower, and right and title of dower, of the said parties of the first part, of, in, and to the aforesaid lease and to the premises therein described, with the appurtenances; to have and to hold the same to the said Mary J. Chase, her heirs and assigns, to the sole and only proper use, benefit, and behoof of the said Mary J. Chase, her heirs and assigns forever; subject, nevertheless, to the rents, covenants, and conditions contained in the said lease from said Warren above described.

And the said Ezra Hall, for himself, his heirs, executors, and administrators, doth hereby covenant and agree to and with the said Mary J. Chase, her heirs and assigns, that the said premises are now free and clear from all incumbrances whatsoever, excepting the said lease and the covenants and conditions therein expressed; and that the said Ezra Hall the said *the said* demised premises unto the said Mary J. Chase, her heirs and assigns, against all persons whomsoever, except as against the said lease and the covenants therein contained, shall and will warrant and by these presents forever defend.

379 In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

EZRA HALL. [L. S.]
MARTHA HALL. [L. S.]

Signed, sealed, and delivered in presence of—
J. A. CAREY.

STATE OF NEW YORK,
Saratoga County, ss:

I certify that Ezra Hall and Martha, his wife, to me known to be the persons described in and who executed the foregoing conveyance, personally appeared before me, on the 9th day of September, 1836, and severally acknowledged that they executed the same. And the said Martha, on a private examination, apart from the said Ezra, acknowledged that she executed the said conveyance freely, without any fear or compulsion of her said husband.

J. A. CAREY,
Commr. of Deeds.

(Endorsed:) Ezra Hall and Martha, his wife, to Mary E. Chase. Deed.

SARATOGA COUNTY,
Clerk's Office, ss:

380 I certify that this conveyance is recorded in said office, in book of deeds C C, page 282, on the 15th day of September, 1836, at 5 o'clock p. m.

A. GOODRICH,
Clerk.

$1.05. Rec'd for record Sept. 15, 1836, at 5 h. p. m.

381 Know all men by these presents that we, Nelson Chase and Mary J., his wife, in consideration of the sum of one hundred dollars lawful money of the United States of America to us in hand paid by Eliza B. Jumel, of the city of New York, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, and delivered to the said Eliza B. Jumel, her heirs and assigns, all that certain leasehold premises mentioned and described in a certain lease in fee, dated on the 12th day of March, 1836, and recorded in the clerk's office of the county of Saratoga, in book of deeds C C, page 62, &c., made by William L. F. Warren and Eliza, his wife, to Ezra Hall, and by him sold to the said Mary J. Chase, by deed of indenture dated the ninth day of September, 1836, which said premises are described in said lease and said indenture as follows: All that certain lot of land situate in said town, (of Saratoga Springs,) and being part of a farm called the

Sadler farm, which was purchased by said William L. F. Warren from Henry Walton, by deed dated 16' October, 1832, which part so conveyed was therein bounded as follows: Beginning at the northwest
382 corner of a lot of land lately sold or leased by the said William L. F. Warren to Marvin Holden, running thence westerly along the south bounds of the highway leading from Flat Rock Spring to Saratoga Lake, ten chains and thirty links, to the northeast corner of the lot belonging to William Lord and Charles Stearns; thence southerly along the east line of said Lord and Stearns lot nine chains and seventy-one links, to the south bounds of the Sadler farm aforesaid; thence along the south bounds of said the Sadler farm, easterly, nine chains and fourteen links, to the lot of Marvin Holden; thence along the west line of said Holden's lot ten chains and fifty-seven links, to the place of beginning; containing nine acres three roods and sixteen perches; to have and to hold the same, and all right and title of dower to the said Eliza B. Jumel, and to her heirs and assigns forever, subject, nevertheless, to the rents, covenants, and conditions contained in the said lease from the said William L. F. Warren and Eliza, his wife, to the said Ezra Hall.

And the said Nelson Chase, for himself, his heirs, executors,
383 and administrators, doth hereby covenant and agree to and with the said Eliza B. Jumel, her heirs and assigns, that the said demised premises are now free and clear from all incumbrances whatsoever, except the said lease and the incumbrances therein mentioned, and the said Nelson Chase the said demised premises, subject to the said lease and the incumbrances therein mentioned, unto the said Eliza B. Jumel, her heirs and assigns, against all persons whatsoever, shall and will warrant and forever defend by these presents.

In witness whereof the parties to these presents have hereunto set their hands and seals the third day of July, in the year of our Lord one thousand eight hundred and thirty-nine.

NELSON CHASE. [L. S.]
MARY J. CHASE. [L. S.]

Sealed and delivered in presence of—

CITY AND COUNTY OF NEW YORK, *ss:*

On this third day of July, A. D. 1839, before me came Nelson Chase and Mary J., his wife, to me known to be the same individuals described in and who executed the foregoing instrument, and severally duly acknowledged before me that they executed the same; and the said
384 Mary J., on a private examination, apart from her said husband, acknowledged that she executed the same freely and without any fear or compulsion of her said husband.

JAS. T. BRADY,
Comr. of Deeds.

STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph Hoxie, clerk of the city and county of New York, and also clerk of the court of common pleas for the said city and county, do hereby certify that James T. Brady, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgement, a commissioner in and for the city and county aforesaid, dwelling in the said city, commissioned and sworn, and duly authorized to take the same; and further that I am well acquainted with the handwriting of such commissioner, and verily believe the signature to the said certificate of proof or acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed
385 the seal of the said court and county, the 3d day of July, 1839.
[SEAL.] JOSEPH HOXIE, *Clerk.*

(Endorsed:) Nelson Chase and Mary, his wife, to Eliza B. Jumel. Assignment of lease.

SARATOGA COUNTY,
Clerk's Office, ss:

I certify that this conveyance is recorded in said office, in book of deeds I J, page 184, &c., on the 24th day of July, 1839, at 11 o'clock and 30 min. a. m.

A. GOODRICH, *Clerk.*

$1.25 paid. Rec'd for record July 24th, 1839, at 11 h. 30 m., a. m.

386 This indenture, made the 21st day of August, 1850, between Wm. L. F. Warren, of Saratoga Springs, & Eliza, his wife, counsellor at law, of the first part, and Eliza B. Jumel, of the city of New York, of the second part.

Whereas the said William L. F. Warren and Eliza, his wife, by indenture bearing date March 12, 1836, recorded in the clerk's office of Saratoga County, in book of deeds C C, page 62, &c., did convey in fee to Ezra Hall all that lot of land situate in Saratoga Springs, in the county of Saratoga, being part of a farm called the Sadler farm, which was purchased by said Wm. L. F. Warren of Henry Walton, by deed bearing date the 16th October, 1832, which said lot of land is bounded & described as follows: Beginning at the northeast corner of a lot of land heretofore sold or leased by said Warren to Marvin Holden, running thence westerly along the south bounds of the highway leading from Flat Rock Spring to Saratoga Lake ten chains and thirty links, to the northeast corner of a lot formerly belonging to Wm. Lord and Charles Stearns; thence southerly along the east line of the said lot for-
387 merly belonging to said Lord and Stearns nine chains and seventy-one links, to the south bounds of the Sadler farm aforesaid; thence along the south bounds of the said Sadler farm, easterly, nine chains and fourteen links to the lot formerly belonging to the said Marvin Holden; thence along the west line of the said Holden lot ten chains and fifty-seven links, to the place of beginning, containing nine acres three roods and sixteen perches of land; to have and to hold the said land and premises above described, to the said Ezra Hall, his heirs and assigns forever, subject, nevertheless, to the conditions of said indenture, and to payment of the yearly rent of fifty-eight dollars and sixty cents, on the first day of April in each and every year during the continuance of said indenture, with a covenant by the said Warren that on the payment to him of all rent due and the sum of eight hundred and thirty-seven dollars and twenty-five cents, that the said Warren would release to the said Hall the said premises free of rent; which lease also provided that the said Hall should open the said highway at least half a rod from the south bounds thereof along the said premises, if the said Warren should request him to do so, as by the said indent-
388 ure, to which reference is made, has a more particular description of its contents, or the record thereof more fully appear.

And whereas the said indenture, and the premises therein described, have been assigned to the said Eliza B. Jumel, who has paid to the said Wm. L. F. Warren all rent of said premises reserved by the said indent-

ure, and also the said further sum of eight hundred and thirty-seven dollars and twenty-five cents:

Now, therefore, this indenture witnesseth that the said parties of the first part to this indenture, in consideration of the premises and of the payment of said rent, and of the sum of eight hundred & thirty-seven dollars and twenty-five cents, the receipt whereof is hereby acknowledged, have, and by these presents do, hereby forever release and discharge the said premises, and the said Eliza B. Jumel, her heirs and assigns, of and from all rent reserved by the said in part recited indenture. And the said parties of the first part to this indenture do hereby remise, release, and quit-claim unto the said Eliza B. Jumel,
389 and to her heirs and assigns forever, all their right, title, and interest, rent, claim, dower, and demand of, in, and to the said premises, with the appurtenances thereunto belonging, to have and to hold the same forever, free and clear and discharged of and from the said rent, unto the said Eliza B. Jumel, her heirs and assigns, and to her and their only proper use, benefit, and behoof forever.

Witness our hands and seals the day and year first above written.

WM. L. F. WARREN. [L. S.]
ELIZA WARREN. [L. S.]

Sealed and delivered in presence of—
JOHN T. CARR.

STATE OF NEW YORK,
Saratoga County, ss:

On this 21st day of August, in the year 1850, Wm. L. F. Warren and Eliza, his wife, came before me, and severally acknowledged that they had executed the within conveyance; and the said Eliza, on a private examination, apart from her said husband, acknowledged that she executed the said conveyance freely, and without any fear or compulsion of her husband. And I further certify that I know the persons who
390 made the said acknowledgement to be the same individuals described in and who executed the said conveyance.

JOHN T. CARR,
Justice of the Peace.

(Endorsed:) Wm. L. F. Warren & Eliza, his wife, to Eliza B. Jumel. Release.

Recorded in Saratoga County clerk's office the 23d day of August, 1850, at 6 hours p. m., in book of deeds No. 58, page 1968.

JAMES W. HORTON, *Clerk.*

391 This indenture, made the third day of September, in the year of our Lord one thousand eight hundred and thirty-six, between Isaac Taylor, of the town of Saratoga Springs, in the county of Saratoga, and Betsey, his wife, of the first part, and Eliza B. Jumel, of the city of New York, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of seven thousand seven hundred and ninety-three dollars of good and lawful money of the United States to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part, in her actual possession now being, and to her heirs and assigns forever, all that certain piece of land situate in

Saratoga Springs, in the county of Saratoga, bounded as follows, to wit: Beginning at the northwest corner of a lot of land in the occupation of Jacob Barhydt, being in the east bounds of lot No. twelve in the xvith general allotment of the patent of Kayaderosseras; thence along
392 the north bounds of the said Jacob's land north eighty-eight and a half degrees east thirty-two chains and seventy-five links to the southwest corner of a farm late in the occupation of Gardner Bullard; thence along the west bounds of the said last-mentioned farm north one and a half degrees west thirty-one chains and fifty-three links to a stake, being the southeast corner of a lot in the occupation of Mr. Stuahl; thence north seventy-three degrees west twelve chains and sixty-eight links to a stake standing in the road leading to said Barhydt's; thence north fifteen degrees east fifteen chains and ten links to the centre of the road leading to Flat Rock Spring; thence north eighty-two degrees west along the centre of said last-mentioned road twenty-eight chains to a stake; thence south one and a half degrees east along the east line of land of Joshua Blanchard, Joel Clements, John Clarke, and John Eddy, fifty-six chains and seven links, to the place of beginning; containing one hundred and sixty-two acres one rood and thirty-two perches of land; subject, nevertheless, to the right *of* the public now have to use said roads as public highways, together with
393 all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said parties of the first part, either in law or equity, of, in, and to the above-bargained premises, with the said hereditaments and appurtenances; to have and to hold the said premises above particularly mentioned and described to the said party of the second part, her heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, her heirs and assigns, forever. And the said Isaac Taylor, for himself, and his heirs, executors, and administrators, doth hereby promise, covenant, grant, and agree to and with the said party of the second part, her heirs and assigns, that the said parties of the first part, at the time of the ensealing and delivery of these presents, are the true and lawful owners and are seized in their own right of a good, true, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple of, in, and to the above-described premises, without any manner of condition or limitation
394 to alter, change, determine, or defeat the same, and have good right, full power, and lawful authority to grant, bargain, sell, convey, and release the same unto the said party of the second part, her heirs and assigns, in manner and form aforesaid; and also that the said premises are free and clear of all claims, rights, dowers, devises, grants, or other incumbrances which may in any manner affect or impair the same; and that the said party of the second part, her heirs and assigns, shall and may, from time to time, and at all times and forever hereafter, peaceably and quietly have, hold, occupy, possess, and enjoy the said hereby granted and bargained premises, without any hindrance, molestation, disturbance, or interruption of the said parties of the first part, their heirs or assigns, or any person or persons lawfully claiming or to claim the same; and also that the said parties of the first part, their heirs, and all and every other person or persons whomsoever lawfully or equitably deriving an estate, right, title, dower, jointure, or interest of, in, and to the above granted premises by, from, under, or in trust for him and them, shall and will, at any time or times

hereafter, upon the reasonable request of the said party of the
395 second part, her heirs and assigns, and at the proper costs and charges of the said party of the second part, her heirs and assigns, make, do, execute, and acknowledge, or cause or procure to be made, done, executed, and acknowledged, every such further and other lawful and reasonable conveyance and assurance in the law for the better and more effectually vesting and conveying and confirming the above-described premises unto the said party of the second part, her heirs and assigns, forever, as by the said party of the second part, her heirs or assigns, or her or their counsel learned in the law, shall be denied, advised, or required. And the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, promise, and agree to and with the said party of the second part, her heirs and assigns, the above-bargained premises in the quiet and peaceable possession of the said party of the second part, her heirs and assigns, against all and every person or persons lawfully or equitably claiming, or to claim, the whole or any part thereof, will forever warrant and defend; and the said Isaac doth also agree that the above boundaries contain the above-mentioned number of acres of land.

In witness whereof the said parties of the first part have set
396 their hands and seals the day and year first above written.

ISAAC TAYLOR. [L. S.]
BETSEY TAYLOR. [L. S.]

Sealed and delivered in the presence of—
J. A. COREY.

STATE OF NEW YORK,
Saratoga County, ss:

I certify that Isaac Taylor and Betsey, his wife, both to me well known to be the persons described in and who executed the within conveyance, personally appeared before me on the 3d day of September, 1836, and severally acknowledged that they executed the same; and the said Betsey, on a private examination, apart from the said Isaac, acknowledged that she executed the said conveyance freely, without any fear or compulsion of her said husband.

J. A. COREY,
Commissioner of Deeds.

I certify the foregoing to be a true copy of the original, with the certificate of acknowledgement thereof.

Recorded September 5, 1836, at 9 h. 30 min. a. m.

A. GOODRICH,
Clerk.

SARATOGA COUNTY,
Clerk's Office, ss:

I, James W. Horton, clerk of the county of Saratoga, do hereby
397 certify that the foregoing transcript of a deed, with the certificate of acknowledgement and of recording, has been compared by me with the original record in my office, and that the same is a transcript therefrom, and of the whole of such original.

In witness whereof I have hereunto set my hand and the seal of the said county of Saratoga, this 17th day of August, 1852.

JAS. W. HORTON,
Clerk.

(Endorsed:) Copy deed. Isaac Taylor & wife to Eliza B. Jumel.

398 Mr. O'CONOR. I will now offer in the marriage letters.
(Obj'd to; admitted subject to objection.)

399 PARIS, *May* 22, 1854.

SIR: I am in nowise offended by the questions you address me in your letter of the 20th instant, and I answer them with the greater pleasure, because their object is the happiness of my neice, upon whom rests all my affection, as the greater part of my fortune is destined to her, as also her brother.

That fortune may be estimated at two millions of dollars, which represent about ten millions of francs.

In case my neice should marry your son, I would assure to her an income of five thousand francs. I cannot exceed that, because it does not enter into my present views to touch my capital, of which a large portion is to be divided between my niece and her brother, my nephew; but being once married, if my niece, as I hope, be happy in her household, and be with regard to me what she has always been, my intention is to advance her beyond the share which is coming to her and which I destine to her from this day.

Such are, sir, my intentions with regard to my fortune; with that, independently of what you would do for them, the young people will be comfortable.

400 If these projects should be realized, I have no doubt, sir, but that my niece would receive among you a welcome and an attachment equal to that which her family has for her, and I also believe that her constant occupation and her principal object would be to deserve them by her attentions, while her presence would increase the joys of the new family which thereafter would be hers.

If the position which I offer for my niece is agre'able to you, I do not doubt, sir, but that the conclusions be favorable to the wishes of your son.

I shall rely upon the details which you will give me of your situation in case you wish that the affair should take place.

Pray receive, sir, the homage of my perfect consideration.

(Signed) ELIZA BURR.

401 PARIS, *May* 26, 1854.

SIR: Your letter of this morning informs me fully of your intentions with regard to the dowry which you desire for the wife which your son shall have chosen. I understand all your solicitude as a father; but as I guarantee the income of five thousand francs by all the contracts which you will require, and that, moreover, that sum would be invested (that of 100,000f.) either in securities of the French government, or in loans on mortgage, or finally by the purchase of real estate. Put me in the place of the state, of the mortgages, or the purchases of real estate, as I guarantee the income, and the obstacle will be overcome.

Moreover, it does not enter into American customs to give a dowry to young ladies when they marry.

All my fortune, as I had the honor of informing you in my letter of the 22d instant, is in real estate. It consists of property which I am not disposed to sell, and it enters by no means into my intentions to incumber it.

Moreover, my niece having lost her mother in her infancy, it
402 is I who brought her up. She never left me, and I have for her a veritable affection.

Without settling to-day the share which she may have in my estate, that share may be considerable, and by my testamentary dispositions that share will be assured to her.

Accept, sir, my very sincere salutations,

(Signed) ELIZA BURR.

If these arrangements enter into your views, we can give them, sir, a solution which will be favorable to the young people. I add that I await your reply by return mail, in order that I may make arrangements with my niece's father, who resides at New York. The packet which is to take the letters leaves Liverpool on Wednesday next. Be good enough, sir, to communicate my good wishes to Madame Pery and to assure her of my perfect consideration.

(Signed) ELIZA BURR.

403 Mr. O'CONOR: Next we give in evidence a certified copy of the deed of Eliza B. Jumel to Ambrose C. Kingsland, dated April 15th, 1850, for the premises fifthly described in the bill.

(Objected to; admitted subject to objection, and marked "Plff.'s Exhibit No. 10, April 27, 1874, S. B.")

It was as follows:

404 This indenture, made the fifteenth day of April, one thousand eight hundred and fifty, between Eliza B. Jumel, of the city of New York and State of New York, party of the first part, and Ambrose C. Kingsland, of the same city, merchant, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of twenty thousand dollars, lawful money of the United States of America, to her in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land situate, lying, and being in the Twelfth ward of the city of New York, on the westerly side of the Kingsbridge road, bounded and described as follows: Easterly by the Kingsbridge road, northerly by the land now or lately belonging to Joseph W. Haven, westerly by the Hudson River, and southerly by
405 land formerly belonging to Hannah Murray, but now in the occupation of Montagnie Ward, containing thirty-nine acres and one rood, be the same more or less, and numbered five, according to a map made by Charles Loss, city surveyor, of the estate of Leonard Parkinson, esquire, situated at Harlem Heights, March 1st, 1810, subject, nevertheless, to all rights and interests granted or conferred by that certain instrument between the said party hereto of the first part and the Hudson River Railroad Company, bearing date the 26 day of August, 1847, and recorded in the office of the register of the city and county of New York, in liber No. 493 of conveyances, page 415. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises and every

part and parcel thereof, with the appurtenances, to have and to
406 hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said party of the first part, for herself, her heirs, executors, and administrators, doth hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that he, the said party of the second part, his heirs and assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy all and singular the premises hereinbefore mentioned and intended to be hereby conveyed, subject as aforesaid, without any let, suit, trouble, denial, eviction, ejection, or interruption whatsoever of or by the said party of the first part, her heirs or assigns, except as aforesaid, or at or by any other person or persons whatsoever having or lawfully claiming any estate, right, title, or interest of, in, or to the same, or any part thereof, except as aforesaid. And the said party of the first part, for herself, her heirs, executors, and administrators, doth hereby
407 further covenant and agree to and with the said party of the second part, his heirs and assigns, that the said premises are free and clear of and from all former and other bargains, sales, gifts, and grants, except as aforesaid, by her, the said party of the first part, or by any other person or persons whatsoever having or claiming lawfully any estate, right, title, or interest of, in, or to the same, or any part or parcel thereof, except as aforesaid. And the said party of the first part, for herself, her heirs, executors, and administrators, doth hereby covenant and agree to and with the said party of the second part, his heirs and assigns, that all and singular the premises hereby intended to be conveyed, subject as aforesaid, are free and clear of and from all encumbrances whatsoever. And, moreover, that she, the said party of the first part, and her heirs, and all or every other person or persons having or lawfully claiming any estate, right, title, or interest of, in, or to the premises, or any part thereof, except as aforesaid, by, from, or under her, shall and will from time to time, and at all times hereafter, upon the reasonable request and at the proper costs and charges of the said party of the second part, his heirs or assigns,
408 make, execute, and acknowledge all and every such further and other acts and conveyances and assurances in the law for the further and more effectually conveying and assuring the premises hereby intended to be conveyed, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised, advised, or required.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

ELIZA B. JUMEL. [L. S.]

Sealed and delivered in presence of—
E. KETCHUM.

CITY AND COUNTY OF NEW YORK, *ss:*

On the fifteenth day of April, A. D. 1850, before me came Eliza B. Jumel, known to me to be the same individual described in and who executed the foregoing conveyance, and acknowledged to me that she executed the same.

EDGAR KETCHUM,
Commissioner of Deeds.

409 OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss :

I have compared the annexed copy with an instrument, recorded in this office on the 16th day of April, A. D. 1850, at 9 o'clock 55 min. a. m., in liber 540 of conveyances, page 266, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 5th day of May, 1871.

MICHAEL CONNOLLY,
Register.

(Endorsed:) Eliza B. Jumel to Ambrose C. Kingsland. Dated April 15, 1850. No. 10. April 27, 1874. S. B.

410 Mr. O'CONOR. Then a similar deed by Eliza B. Jumel to Isaac P. Martin, dated the 1st of March, 1853, for that portion of the original homestead, that which is sixthly described in the complaint.

(Obj'd to; admitted subject to objection, and marked "Plff's exhibit No. 11, April 27, 1874," S. B.)

It was as follows:

411 This indenture, made the first day of March, in the year one thousand eight hundred and fifty-three, between Eliza Brown Jumel, of the city of New York, of the first part, and Isaac P. Martin, of said city, counsellor at law, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of eight thousand dollars, lawful money of the United States, to her in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all and singular that certain triangular piece or parcel of land situate in the Twelfth ward of the city of New York, bounded as follows: on the east by the Tenth avenue, on the north

412 by land now or late of Shepherd Knapp, formerly Wear's land, and now known as the Cross Keys property, and on the west by the Kingsbridge road, containing about three acres, more or less, being part and parcel of lot No. 8, (eight,) as laid down on a map of property of Leonard Parkinson, esquire, at Harlem Heights, made by Charles Loss, city surveyor, dated 1st March, 1810, and on file in tin case No. 10, in the office of the register of the city and county of New York, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. And the said Eliza Brown

413 Jumel, for herself, her heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said Eliza Brown

Jumel at the time of the sealing and delivery of these presents is lawfully seized in her own right of a good, absolute, and indefeasible estate of inheritance, in fee-simple, of and in all and singular the above granted and described premises, with the appurtenances, and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid; and that the said party of the second part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, her heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes,
414 assessments, and encumbrances of what nature or kind soever; and also, that the said party of the first part, and her heirs, and all and every person or persons whomsoever lawfully or equitably deriving *deriving* any estate, right, title, or interest of, in, or to the hereinbefore granted premises by, from, under, or in trust for her or them, shall and will, at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such *such* further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns, forever, as by the said party of the second part, his heirs and assigns, or his or their counsel learned in the law, shall be reasonably advised or required; and the said Eliza Brown Jumel, her heirs, the above-described and hereby-granted and released premises, and every part and parcel thereof, with the ap-
415 purtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part and her heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend; and whereas the above-granted triangular piece of land is a part of certain premises conveyed by Mary Jumel Bowne to Michael Werckmeister, by deed bearing date the thirteenth day of May, 1828, and recorded in the office of register of the city and county of New York, in Liber 243 of conveyances, page 75, on the twenty-first day of November, 1828, upon the trust and for the uses therein contained, to which last-mentioned deed reference is hereby made; and whereas in and by the said deed the said premises were so conveyed to the said Michael Werckmeister, among other trusts, upon the express trust that he, the said Michael Werckmeister or his heirs, should lease, devise, let, and convey, assure, and dispose of all and singular the said hereby-described premises, with their and every of their appurtenances, to such person or persons, for such term or terms, or such rent or rents, for
416 such price or prices, at such time or times, to such uses, intents, and purposes, and in such manner and form as she, the said Eliza Brown Jumel, notwithstanding her then present or any further coverture, as if she were a feme sole, should by any instrument in writing, executed in presence of any two credible witnesses, order, direct, limit, and appoint, and in case of an absolute sale of said premises or of any part thereof, to pay over the purchase-money to the said Eliza Brown Jumel,

or invest the same as she should order and direct. Now, in consideration aforesaid, by this present instrument in writing, executed in the presence of two credible witnesses, who have hereto subscribed their names as witnesses, I, the said Eliza Brown Jumel, by force and virtue of the power and authority in the said deed to said Michael Werckmeister in that behalf given to me, and of all and every other power and powers to me in that behalf given or reserved in me vested, or me in anywise thereto enabling, hereby order, direct, limit, and appoint that the said Michael Werckmeister, his heirs, or such trustee as may have been or may hereafter be appointed in his or their place as such trustee, shall duly
417 convey, assure, and dispose of, in fee-simple, to the said Isaac P. Martin, his heirs and assigns, the said triangular piece of land hereinbefore granted to the said Isaac P. Martin, his heirs and assigns; and I hereby acknowledge that I have received the said purchase-money therefor, and declared that such conveyance, assurance, and disposal shall be made as aforesaid, without any further payment therefor by the said Isaac T. Martin, his heirs or assigns; and in consideration aforesaid, the said Eliza Brown Jumel, for herself, her heirs, executors, and administrators, hereby covenants, promises, and agrees to and with the said Isaac P. Martin, his heirs and assigns, that she hath not at any time heretofore executed the powers or authorities, or any of them, contained in said deed of trust, or made, done, committed, or executed, or suffered any act, deed, matter, thing, order, direction, limitation, or appointment, whereby or wherewith, or by reason whereof, the said triangular piece of land, hereinbefore described, or any part thereof, is, may, can, or shall be anywise impeached, charged, affected, or in-
418 cumbered in title, estate, or otherwise howsoever, and that she, her heirs, executors, and administrators, shall at all times hereafter indemnify and save, defend and keep harmless, the said Isaac P. Martin, his heirs, executors, administrators, and assigns, against every such execution of said powers and authority, or any of them, and against every such act, deed, matter, thing, order, direction, limitation, and appointment, and from all costs, charges, damages, losses, and expenses that shall or may happen to or arise therefrom.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

ELIZA B. JUMEL. [L. S.]

The words "her" is "things," after an erasure, before execution; the printed words "In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written," and the printed words "sealed and delivered in the presence," stricken out with a pen, all before execution.

Signed, sealed, and delivered in the presence of—

NELSON CHASE,
M. W. DIVINE.
419 *Witnesses.*

CITY AND COUNTY OF NEW YORK, *ss:*

On this first day of March, 1853, before me personally appeared Eliza Brown Jumel, known to me to be the same person described in and who executed the foregoing instrument, and then duly acknowledged that she executed the same.

M. W. DIVINE,
Commr. of Deeds.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 1st day of March, A. D. 1853, at 2 o'clock p. m., in Liber 626 of cons., page 479, and certify the same to be a correct transcript therefrom, and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 4th day of May, 1871.

MICHAEL CONNOLLY,
Register.

420 (Endorsed:) Eliza Brown Jumel to Isaac P. Martin. Deed. Dated March 1st, 1853. No. 11. April 27, 1874. S. B.

421 Mr. O'CONOR. We next give in evidence the deed of William B. Jones and others to Nelson Chase, dated July 29, 1865.

(Same objection and ruling; paper marked "Plff.'s Exhibit No. 12, April 27, 1874. S. B.")

They were as follows:

422 This indenture, made the twenty-ninth day of July, in the year one thousand eight hundred and sixty-five, between William B. Jones, and Sarah A. Jones, his wife, Stephen J. Jones, Eliza J. Franchell, formerly Eliza J. Jones, widow, and Louiza J. Maddox, formerly Louisa J. Jones, widow, all of the city of New York, in the State of New York, parties of the first part, and Nelson Chase, of the same place, counsellor at law, party of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of forty thousand dollars, ($40,000,) lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all our
423 and each of our right, title, interest, share, and proportion, joint or otherwise, as heirs at law of Eliza B. Jumel, deceased, late of Harlem Heights, New York City aforesaid, of, in, and to the estate of the said Eliza B. Jumel, whether real, personal, or otherwise, of which she died seized, possessed of, or entitled unto whatsoever, wherever situate, meaning and intending hereby to grant, bargain, sell, and convey any and all right, title, interest, share, or proportion which now exists or may hereafter vest in us at heirs at law of the said Eliza B. Jumel, deceased, or otherwise;

[U. S. int.-rev. stamp 20 dollars, cancelled.]
[U. S. int.-rev. stamp, 20 dollars, cancelled.]

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the

appurtenances; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances,
424 unto the said party of the second part, his heirs and assigns, forever. And the said parties of the first part, for themselves and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part, their heirs, and against all and every person and persons, whomsoever, lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WM. B. JONES.
SARAH A. JONES.
STEPHEN J. JONES.
ELIZA T. FRANCHELL.
LOUISA T. MADDOX.

Sealed and delivered in presence of—
W. DUNNING.

STATE OF NEW YORK,
City and County of New York, ss:

On this twenty-ninth day of July, in the year one thousand eight hundred and sixty-five, before me, the subscriber, appeared William B. Jones, and Sarah A., his wife, Stephen J. Jones, Eliza J. Franchell, and Louisa J. Maddox, to me personally known to be the same
425 persons described in and who executed the within instrument, and who severally acknowledged that they executed the same; and the said Sarah A. Jones, on a private examination by me made separate and apart from her husband, acknowledged that she executed the same freely and without any fear or compulsion of her said husband.

THOS. J. McCAHILL,
Commissioner of Deeds.

REGISTER'S OFFICE,
City and County of New York:

I hereby certify that the foregoing instrument was this day recorded in the office of the register of the city and county of New York, in liber 999 of conveyances, page 242, at 3 o'clock and 25 mins. p. m.

In witness whereof I have hereunto set my hand and official seal this 27th day of December, 1866.

JOHN McCOOL, *Reg.* [L. S.]

426 STATE OF NEW YORK,
City and County of New York, ss:

I, William C. Conner, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Thos. J. McCahill, whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a commissioner of deeds in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of such commissioner, and verily believe that the signature to the said certificate of proof or acknowl-

edgement is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 3d day of January, 1867.

WM. C. CONNER, *Clerk.*

[5 cent U. S. int.-rev. stamp, cancelled.]

427 STATE OF NEW YORK,
Saratoga County, Clerk's Office, ss:

Recorded January 3d, 1867, at 10 o'clock a. m., in book No. 106 of deeds, at page 122, &c.

JAMES W. HORTON, *Clerk.*

(Endorsed:) Copy. William B. Jones, Sarah A. Jones, Stephen J. Jones. Eliza J. Franchell, and Louisa J. Maddox to Nelson Chase. Deed. No. 12. April 27, 1874. S. B.

428 Mr. O'CONOR. Next we offer in evidence a deed of settlement between Nelson Chase and his two children, and their spouses, dated October 12, 1865.

(Same objection and ruling. Deed marked "Plff.'s Exhibit No. 13, April 27, 1874. S. B.")

It was as follows:

429 This indenture, made at the city of New York on the twelfth day of October, in the year one thousand eight hundred and sixty-five, between Nelson Chase, of the city of New York, in the State of New York, counsellor at law, party of the first part, Eliza Jumel Pery, of the same city, and Paul Raymond Guillaume Perry, her husband, parties of the second part, and William Inglis Chase, of the same city, and Isabella, his wife, parties of the third part: Whereas Mary Jumel Chase, now deceased, formerly of said city, the wife of said party of the first part and mother of the said Eliza Jumel Pery and William Inglis Chase, was brought up in the family of Eliza B. Jumel, also late of the said city, now deceased, and, from the relations which subsisted between her and the said Eliza B. Jumel, might properly have been considered as the child by adoption of her, the said Eliza B. Jumel; and whereas after the death of said Mary Jumel Chase her said children succeeded to the said relation in which she had in her life-time stood to the said Eliza B. Jumel, and whilst the said Eliza B. Jumel retained her faculties were by the said Eliza B. Jumel in her common speech
430 sometimes denominated her grand-children and at other times her nephew and niece.

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And whereas the said Eliza B. Jumel did, whilst so in possession of her faculties, uniformly treat and recognize the said Eliza Jumel Pery and William Inglis Chase as her intended heirs by adoption, and did give them both to understand and justly to expect that they would be the chief if not the only beneficiaries in the distribution of her estate after her death, under her last will and testament, and as the said parties of the second part assert, the said Eliza B. Jumel did, at and before the intermarriage of the said parties of the second part, promise and assure them, as an inducement to their said intermarriage, that all such parts of her estate as should not be given by her, the said Eliza B. Jumel, to the said William Inglis Chase, should be devised and bequeathed by her to the said Eliza Jumel Pery, and that the share therein of said Eliza Jumel Pery should not be less than one-half of her, said Eliza

B. Jumel's, whole estate. And whereas a certain paper bearing date the fifteenth day of April, one thousand eight hundred and sixty-three, purporting to be the last will and testament of the said Eliza B.
431 Jumel, hath been set up as being such last will and testament by some or one of the persons named as executors or beneficiaries therein, which paper purporting to be the will of the said Eliza B. Jumel contains provisions that conflict with the aforesaid just expectations of the said Eliza Jumel Pery and William Inglis Chase, and also with the aforesaid promise made by her, the said Eliza B. Jumel, to the parties of the second part before their said intermarriage. And whereas the said party of the first part hath purchased from William B. Jones and Sarah A. Jones, his wife, Stephen J. Jones, Eliza J. Franchell, formerly Eliza J. Jones, widow, and Louisa J. Maddox, formerly Louisa J. Jones, widow, who are the heirs at law and next of kin of the said Eliza B. Jumel, all their respective rights, titles, and interests in the estate, real and personal, which were of the said Eliza B. Jumel, deceased, and intends to dispute the validity of said paper, and to procure it to be judicially established that the same paper is not, to any extent, or in any of its parts or provisions, the will or testament of the said Eliza B. Jumel, deceased. And whereas, in consideration of the circumstances aforesaid and in view of the interest which the
432 said Nelson Chase and his said children respectively have and feel, each in the welfare of him or her self, and of his or her issue, present and prospective, and in the common welfare of the whole family; and in advance of any adjustment or determination of the controversy or controversies likely to arise upon the conflicting claims of the respective parties hereto, and of those apparently interested by the terms of said paper in establishing the same as a valid testamentary disposition, they, the said parties hereto, have deemed it fit and expedient by this indenture to settle as between the several parties to these presents and as between every of them, in a manner mutually concurred in and agreed upon as satisfactory, all and every right, title, interest, property, possession, claim, or demand which the parties to this indenture or any of them have or hath by reason of anything which has heretofore happened, can, shall, or may acquire in, to, or against the estates, real or personal, or either of them, of the said Eliza B. Jumel, deceased, including all demands for services, or for covenants, or promises broken, or any cause or consideration whatever which any of the said parties to this
433 indenture could or might have or prosecute against the heirs, devisees, executors, or administrators of the said Eliza B. Jumel, deceased.

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Now, therefore, this indenture witnesseth, that the said parties of the second and third parts, and each of them, in consideration of one dollar to each of them in hand paid by the said party of the first part, at and before the sealing and delivery of these presents, have and hath granted, bargained, sold, aliened, conveyed, and confirmed, and by these presents do and doth grant, bargain, sell, alien, convey, and confirm, unto the said party of the first part, his heirs, executors, administrators, and assigns, forever, all and every right, title, interest, property, possession, claim, and demand of them, the said parties of the first and second parts, and of each and every of them, of, in, or to any and every estate, real and personal, lands, tenements, hereditaments, goods, chattels, and credits which were of the said Eliza B. Jumel at the time of her death, including all demands which the said parties of the first and second parts, or either or any of them, for services or for covenants or promises broken, or any cause or con-

5-c. int.-rev. stamp, cancelled.

434 sideration whatever, could or might have or prosecute against the heirs, devisees, executors, or administrators of the said Eliza B. Jumel, deceased, (save and except only any claim or demand which the said Eliza Jumel Pery might have under the provisions of the said paper-writing purporting to be the last will and testament of the said Eliza B. Jumel, deceased;) together with all and singular the tenements, hereditaments, and appurtenances unto the same premises hereby granted or intended so to be, or any part or parcel thereof, belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever as well in law as in equity of the said parties of the second and third parts, and each and every of them, of, in, or to the above described or mentioned premises, and every part and parcel thereof, with the appurtenances; to have and to hold all and singular the above described or mentioned premises, together with the appurtenances, unto the said party of the first part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever;
435 and the said party to these presents of the first part doth covenant, grant, promise, and agree to and with the said Eliza Jumel Pery and William Inglis Chase, respectively, as follows, that is to say: that when and immediately after a final adjudication shall be made in which it shall be determined that the said paper is in respect to the lands or real estate which were of the said Eliza B. Jumel, or in respect to any particular part or portion thereof, null and void, so that the said party of the first part shall have a lawful title thereto unaffected by such paper, he, the said party of the first part, shall and will, by sales or otherwise, raise out of the said last-mentioned lands or real estate, such sums as may be necessary to satisfy all moneys paid or to be paid by him, the said party of the first part, unto the said heirs at law of the said Eliza B. Jumel, on or for the purchase so made by him as aforesaid, with interest to that date on every sum so paid by him, and also to satisfy all moneys paid or to be paid by him, the said party of the first part, unto any person or persons or bodies politic or corpo-
436 rate claiming any interest under the said paper-writing, their attorneys, solicitors, or agents, pursuant to any agreement which he, the said party of the first part, (in the exercise of a free and unlimited discretion any power in that behalf hereby reserved unto him,) may think fit to make for the purpose of facilitating or ac-
5-c- int.-rev. stamp. celerating or otherwise affecting the issue or course of any action or judicial proceeding which may be instituted between him, said party of the first part, and any such person or persons, bodies politic or corporate, so claiming any interest under the said paper, or by way of compromise, together with interest on such last-mentioned moneys from the time or times of the payment thereof; and also to satisfy all costs, charges, and expenses for the services of counsel, and such other things as in the exercise of an unlimited discretion in this behalf hereby to him reserved he, the said party of the first part, may think needful in resisting all attempts to establish the said paper as a will, or any alleged devise, bequest, or disposition purporting or asserted to be made thereby, and in procuring a judicial vacation or disallowance of said paper, or of any such alleged devise, bequest,
437 or disposition therein, together with interest on such last-mentioned moneys from the time or times of the payment thereof, and to satisfy the sum of twenty thousand dollars, which he, the said

party of the first part, will thereupon pay unto the said Eliza Jumel Pery; and after so satisfying or re-imbursing himself all such moneys, with interest as aforesaid, then, that he, the said party of the first part, on a written request subscribed by the said Eliza Jumel Pery or William Inglis Chase, shall and will, by a proper instrument in the law to be devised and prepared by the party or parties making such request, her, his, or their counsel learned in the law, forthwith grant, bargain, assure, and convey one equal undivided third part of the residue of such last-mentioned lands or real estate unto the said Eliza Jumel Pery or William Inglis Chase, as the case may be, to hold the same for and during the term of her or his natural life, with remainder during his life to the said Paul Raymond Guillaume Pery, husband of the said Eliza Jumel Pery, or remainder during her life to the said Isabella, the wife
438 of said William Inglis Chase, as the case may be, and with a further remainder in fee simple absolute to such person or persons as may at the death of said Eliza Jumel Pery or William Inglis Chase, as the case may be, be in life and be her or his heir or heirs at law, under the general statutes of the State of New York at that time regulating the descent of lands; a sole heir to take solely, but when more than one such heirs, to take in such shares and proportions as the said laws shall prescribe in reference to lands descending in a case of intestacy from the said first life-tenant; and that in case of the death of the said Eliza Jumel Pery and William Inglis Chase, or either of them, the heirs, devisees, or executors, husband or wife of the person or persons so dying, shall have the right to demand and enforce performance of so much of this covenant as may remain unperformed and proper to be performed.

5 c. int. rev. stamp.

And it is further mutually covenanted and agreed between the said parties to these presents in manner following, that is to say: In case the said paper shall be established in whole or in part as a valid and effectual disposition of any prop-
439 erty, real or personal, which was of the said Eliza B. Jumel at the time of her death, and the said party hereto of the first part, by judicial suit, action, or proceeding, in his own name or in the names or name of any parties or party to this indenture, or otherwise, shall, by reason or on account of any promise or liability heretofore incurred by the said Eliza B. Jumel, recover any lands or real estate from any alleged devisees, executors, or administrators with a will annexed of her, said Eliza B. Jumel, then, and in any and every such case, he, the said party of the first part, when and immediately after a final recovery as last aforesaid shall be so had, shall and will act in respect of the lands and real estate so recovered as last aforesaid in like manner as he hath above agreed to act concerning any lands or real estate in respect to which the said paper may be so as aforesaid determined to be null and void. And it is also mutually agreed that any adjudication or recovery hereinbefore referred to shall be deemed final when by lapse of time or otherwise there shall not be any right to appeal from the same. And it is also mutually agreed that the said party hereto of the first part
440 retains for his own sole use all personal estate which was of the said Eliza B. Jumel, deceased, over and above the payment of her debts and any rents or profits of any real estate left by her that may have accrued since her death, or that may accrue to or be recovered by him, the said party of the first part, previously to the time when there shall be a final adjudication or recovery concerning the same as aforesaid. And it is also mutually agreed that until such final adjudication or recovery as aforesaid, and whilst the said parties to these presents shall, by mutual accord and consent, reside together, the said party of

the first part shall not make any claim or demand against the said parties of the second and third parts or either or any of them for board, lodging, clothing, or other maintenance supplied or advances made to them, respectively, or payment to their uses, respectively, unless he should demand and receive at the time a promissory note for the same subscribed by the party to be charged; and it is hereby agreed and declared between and by the parties to these presents that at any time during the continuance in life of the said party of the first part and his said daughter and son, and until
441 he, the said party hereto of the first part, shall have actually conveyed or assured by his deed or deeds in that behalf the said two equal undivided third parts of the said residuary real
5-c. int. rev. stamp. estate so by him covenanted and agreed to be conveyed and assured as aforesaid, or one of such undivided third parts, it shall and may be lawful for the said party of the first part and his said son and daughter, (if they at their free will shall think fit so to do,) by their joint act and deed, signed and sealed by each of them, said last-mentioned three persons, and attested by two subscribing witnesses, to make and declare a valid and effectual partition and division of the said residuary real estate by metes and bounds or other appropriate and intelligible description, thereby setting off, so that they may be respectively held and enjoyed in severalty by the tenants or owners thereof, the said respective equal third parts into which the ownership of the said residuary real estate is intended to be divided by the conveyances and assurances which upon demand as aforesaid the said party
442 of the first part hath hereinbefore covenanted and agreed to make; and for the purpose of manifesting and effectuating such partition and division, the lots or parcels of land and real estate constituting the equal share or third to be so conveyed and assured as aforesaid to the said Eliza Jumel Pery, with remainders thereon as before in that behalf specified, shall, in case such partition and division be made, be distinctly indicated and distinguished in such partition act and deed, the same equal share or third so designated as last aforesaid shall be conveyed and assured in severalty by the said party of the first part in performance of his aforesaid covenant in that behalf, in lieu and stead of an equal undivided third of the whole of said residuary estate. And it is hereby provided, also, that the lots or parcels of land and real estate constituting the equal share or third to be so conveyed and assured as aforesaid to the said William Inglis Chase, with remainders thereon as before in that behalf specified, shall, in case such partition and division be made, be distinctly indicated and distinguished in such partition act and deed, and the same equal share or third part
443 so designated as last aforesaid shall be conveyed and assured in severalty by the said party of the first part, in performance of his aforesaid covenant in that behalf, in lieu and stead of an equal undivided third of the whole of said residuary real estate.

And in respect to each of the said equal third parts or shares of the said residuary real estate in and by these presents above
5-c. int. rev. stamp. covenanted and agreed to be conveyed and assured by the said party of the first part to his said daughter and son, respectively, with remainders on the same, respectively, as above provided, and in respect to any and every part or portion of such equal third parts or shares, respectively, and as well whilst such third parts or shares may remain undivided as after any such partition and division as is herein above authorized, and as well after as before such equal shares or third parts, respectively, shall have been so conveyed and assured by the said

party of the first part, as hereinabove provided, it is by these presents mutually covenanted, agreed, provided, and declared as follows,
444 that is to say: That from time to time, and at all times hereafter whilst the said party of the first part and his said daughter and son shall all remain in life, it shall and may be lawful for the said Eliza Jumel Pery, (by and with the consent of her said father and brother,) as it respects the said equal share or third part above agreed to be conveyed and assured to her, with remainder thereon as aforesaid, and for the said William Inglis Chase, (by and with the consent of his said father and sister,) as it respects the said equal share or third part above agreed to be conveyed and assured to him, with remainders thereon as aforesaid, by any deed or deeds attested by two subscribing witnesses, and signed and sealed, as the case may be, by the said Eliza Jumel Pery, with consent as aforesaid, or by the said William Inglis Chase, with consent as aforesaid, and with or without power of revocation, to alter and vary or determine, revoke, annul, and make absolutely void all or any of the estates, interests, remainders, limitations, interests, and purposes concerning the aforesaid equal shares or third parts of the said residuary real estate, respectively, hereinabove declared or in-
445 tended to arise under or created in pursuance or performance of the aforesaid covenants and agreements of the said party of the first part hereinabove in that behalf contained, anything hereinbefore contained to the contrary thereof in anywise notwithstanding; and also to direct any other estates, interests, remainders, limitations, and intents and purposes in lieu and place of those so altered or made void, as the person so signing and sealing such deed or deeds last aforesaid, in the absolute discretionary power hereby granted or reserved to her or him, may, with such consent in each case respectively as aforesaid, think fit, provided that the same shall be such only as might lawfully and effectually be directed under the laws of the State of New York applicable to this instrument, and to the direction so hereby allowed to be made in virtue of the same.

5-c. int. rev. stamp.

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

NELSON CHASE. [L. S.]
ELIZA JUMEL PERY. [L. S.]
PAUL R. G. PERY. [L. S.]
WILLIAM INGLIS CHASE. [L. S.]
ISABELLA A. CHASE. [L. S.]

Signed, sealed, and delivered in presence of—
W. C. WETMORE,
As by all parties except Isabella Chase.
ALFRED T. ACKERT,
As to all.

446 STATE OF NEW YORK,
City and County of New York, ss:

On the twelfth day of October, A. D. one thousand eight hundred and sixty-five, before me personally came Nelson Chase, Eliza Jumel Pery, and Paul Raymond Guillaume Pery, her husband, William Inglis Chase, and Isabella A. Chase, his wife, all said persons known to me to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged that they executed the forgoing instrument, and they severally acknowledged that they executed the same.

And the said Eliza Jumel Pery and Isabella A. Clark, being by me severally privately examined, separate and apart from their respective husbands, acknowledged that they executed the said foregoing instrument freely and without any fear or compulsion of their husbands.

ALFRED T. ACKERT,
Notary Public, City & County of N. Y.

REGISTER'S OFFICE,
City & County of New York, ss:

447 I hereby certify that the foregoing instrument was this day recorded in the office of the register of the city and county of New York, in liber 993 of conveyances, page 452, at 11 o'clock and 10 minutes a. m.

In witness whereof I have hereunto set my hand and official seal this 20th day of February, 1867.

CHAS. G. HALPINE, [L. S.]
Register.

STATE OF NEW YORK,
City & County of New York, ss:

I, William C. Conner, clerk of the city and county of New York, and also clerk of the supreme court of the said city & county, the same being a court of record, do hereby certify that Alfred T. Ackert, whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgement a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary, and verily believe
448 that the signature to the said certificate of proof or acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 19th day of November, 1867.

[SEAL.] WM. C. CONNER, *Clerk.*

[5-c. int. rev. stamp.]

(Endorsed:) Eliza Jumel Pery & Paul R. G. Pery.

Recorded in the Saratoga County clerk's office on the 21st day of November, 1867, at 1 o'clock p. m., in book number 109 of deeds, page 44, &c.

JAMES W. HORTON, *Clerk.*

449 Mr. O'CONOR. We take it as an admission that the sale by Mr. Chase of the lots seventhly and eighthly described in the complaint was for the sum of $24,000, with a warrantee. We will now put in evidence the deposition of Edward Cook, a clerk in the Mechanics' Bank, from the stenographer's minutes of the first trial, as follows:

450 EDWARD G. COOK sworn on behalf of the defendant.

Examined by Mr. O'Conor:

1. Q. Where do you reside?
A. In the city of New York.

2. Q. What is your business?
A. Paying-teller in the Mechanics' Bank.
3. Q. How long have you been in that situation?
A. Thirty-four years.
4. Q. Did you know Madame Jumel?
A. I did.
5. Q. Did you keep an account at some period in that bank?
A. Yes, sir; for a number of years.
6. Q. Were you in the habit of paying her checks?
A. Yes, sir.
7. Q. Did you become familiar with her handwriting?
A. Yes, sir; I know it.
8. Q. (Handing letters to the witness.) Look at the signature on these letters, "Eliza Burr." Look at each of them before you answer to any.
A. I should think that (Exhibit No. 19) to be her handwriting.
9. Q. Look at Exhibit No. 20.
A. That is the same.
10. Q. Look at Exhibit No. 21.
A. That is the same. I recognize those as her signature, in my judgment.
451 11. Q. Exhibit 22.
A. The same.
12. Q. Exhibit 23.
A. The same.
13. Q. Exhibit 24.
A. Yes, sir.
14. Q. Exhibit 25.
A. Yes, sir; that is the same.
15. Q. Exhibit 26.
A. All alike.
16. Q. Exhibit 27. Look at the signature on that.
A. That seems to be the same.
17. Q. Exhibit 28.
A. And also that.
18. Q. Did you ever see these until just now, this afternoon, until you came into court?
A. I do not recollect that I did.
19. Q. Until to-day did you ever see the signature of Eliza Burr?
A. I do not think I have until now. The signature I saw was Eliza Jumel; I do not recollect ever seeing the signature of Eliza Burr.
20. Q. Can you say simply from seeing one name, "Eliza," whether the whole signature is in her handwriting?
A. I should judge it to be; I should think there was similarity
452 enough between the surname and the Christian name to enable me to judge.
21. Q. You never saw her writing "Eliza Burr?"
A. No, sir.
22. Q. You never saw any of her writing "Eliza Burr" that she acknowledged to be hers?
A. No, sir.
23. Q. You judge it is her handwriting from the word "Eliza?"
A. I judge pretty much from the style of the handwriting.
24. Q. From the word "Eliza?"
A. I think the similarity between the surname and Christian name.
25. Q. You do not know how she wrote "Eliza?"

A. No, sir; there appears to be a sort of similarity between the two names.

26. Q. Then you judge by comparison?

A. Yes, sir.

27. Q. And not from any knowledge?

A. No, sir; I have not any knowledge at all.

28. Q. Is the body of those papers in her handwriting?

A. I should judge not. I have not examined carefully enough to see.

29. Q. Examine them.

A. I have no idea that they are in her handwriting at all.

453 30. Q. They are in a different handwriting?

A. I should judge so.

31. Q. The papers to which her name is attached are in French?

A. I have not examined them carefully enough to say. [The witness examines the papers.] I have no idea she wrote the body.

32. Q. Do you read French?

A. Very little.

33. Q. But it is evident that is not the handwriting of the signature; it is evident the body is not the same handwriting as the signature?

A. I should think not; certainly not.

34. Q. Have you examined those signatures since you have been here so as to be competent to speak about them?

A. I think so; that is my opinion about them—I judge them to be her handwriting.

454 It was then admitted by counsel on both sides. The first trial commenced January 23d, 1872, and ended March 16th, 1872. The jury did not agree. The second trial commenced December 9th, 1872, and ended February 10th, 1873. In each case a week was lost on account of the sickness of one of the jurors.

455 AUGUSTUS SMITH, a witness called on behalf of the plaintiff, being duly sworn, testified:

By Mr. Carter:

Q. You are a lawyer, and reside in New York?

A. Yes, sir.

Q. Where has your residence been for a number of years back?

A. For 21 years I have lived at Fort Washington—a great part of that time; winters I have been in town lately.

Q. You are a partner of Isaac P. Martin?

A. Yes, sir.

Q. Did you know Ambrose C. Kingsland?

A. Yes, sir.

Q. Did you and Mr. Martin purchase a piece of property of him?

A. I was not interested in the purchase from him, but I became an owner of a considerable part of the 40 acres.

Q. Do you recollect the piece of property that Mr. Kingsland was in possession of?

A. I do.

Q. Consisting of how many acres, about?

A. They called it 40 acres, but it was about thirty-six.

Q. Purchased from Madam Jumel?

A. Yes, sir; it came from Madam Jumel.

Q. Now, let me take you back to the time of Madam Jumel's

456 death, the 16th of July, 1865; you were familiar with that property at that time?

A. I lived upon it, and knew it all.

Q. Give us your estimate of its value per acre at that time without the improvements.

(Obj'd to; taken subject to objection.)

A. I should say $7,000 or $7,500 an acre.

Q. All of it lay west of the Kingsbridge Road?

A. Yes, sir; beginning at the Kingsbridge Road and running to the river.

Q. Land on that side of the road, I believe, has considerable more value than land on the other side?

A. I think it is a good deal more valuable.

Q. Should you say twice as much, probably?

A. Well, I should think twice as valuable.

Q. About half the land on the other side?

A. I should say so. Perhaps I ought to qualify that in respect to the property down near the village.

By Mr. Chatfield:

Q. You mean the east side property?

A. Yes, sir.

Q. That would be worth more than the general average, of course?

A. Yes, sir.

Q. Why is not property on the east side as valuable as property on the other?

457 A. The North River, we suppose, favorably affects the property there. People who have property that overlooks the North River, that is considered worth more.

Q. The view is better?

A. Yes, sir.

Mr. O'Conor. We will next read from the bill of exceptions the testimony of Mary Anne Wilkie and David Wilkie, at pages 1143 and 1144. I read on page 1143 the cross-examination of Mary Ann Wilkie. Then the cross-examination of David Wilkie, at page 1144. Both of those witnesses were called on behalf of Bowen.

I also read part of a deposition taken de bene esse in the supreme court and common pleas of the same David Wilkie, a witness produced on the part of Bowen, from question and answer 52 to 55, and inclusive.

Also the letters of administration on the will of Madam Jumel are admitted, and we now give in evidence the inventory of her gross personal estate. Total appraised value, $23,124.23.

(Objected to; admitted subject to objection. Mr. O'Conor stated that, with the exception of calling a few short witnesses to-morrow, he would rest the case on behalf of plaintiff.)

458 Adjourned to April 28, 1874, at 11 o'clock.

459 The complainant's counsel then read in evidence from the aforesaid bill of exceptions parts of the testimony of Mary Ann Wilkie and David Wilkie, witnesses called by the plaintiff in that suit; which was as follows:

460 The plaintiff then produced, as a witness on his behalf.

Mary Ann Wilkie, who testified before the said jury, among other things, as follows:

I reside at Fort Washington. Am the wife of David Wilkie. Knew Madame Jumel in her life-time and lived on her place. Knew Mr. Chase, the defendant, also Paul R. Pery and his wife, Mrs. Pery, Mr. Chase's daughter. I lived in the gate-house after Madame Jumel died. While

I was there I saw Mr. Bowen, the plaintiff, in a carriage in the latter part of August, 1868. Mr. and Mrs. Pery were at home.

The plaintiff then asked the witness the following question:

You may state whether Mrs. Pery gave you any instructions about the gate at the time you saw Mr. Bowen there.

To which the defendant objected.

The presiding judge decided to sustain the objection, and refused to allow the witness to answer the question.

The plaintiff then offered to prove before the said jury by this witness that Mrs. Pery instructed the witness to shut the gates and keep madam's bastard out.

To which the defendant objected.

The presiding judge decided to sustain the objection, and re-
461 fused to allow the plaintiff so to prove.

The plaintiff then asked the witness the following question:

Has any one said anything to you about telling or not telling what you knew about this case?

To which the defendant objected.

The presiding judge decided to sustain the objection, and refused to allow the witness to answer the question.

The plaintiff then offered to prove before the jury by this witness that Mrs. Pery, daughter of the defendant, was the person who had made threats to this witness if she should become a witness for the plaintiff.

To which the defendant objected.

The presiding judge decided to sustain this objection, and refused to allow the plaintiff so to prove.

In her cross-examination this witness testified, among other things, as follows:

Speaking of Mrs. Chase, who was then dead, I heard Madame Jumel very often use the expression, "Mary, the dear angel." I heard her say of Mrs. Chase, "Dear little angel." When she was dying she asked me if I would take care of her children. I told her that I would, and then she died happy.

462 The plaintiff called as a witness DAVID WILKIE.

On his cross-examination, this witness testified as follows:

Madame Jumel spoke very frequently in my hearing of Mrs. Chase, then deceased; very often, very often. She always spoke of Mrs. Chase very kindly; talked highly of her all the time. She used to say she (Mrs. Chase) was her angel. She said that when Mrs. Chase was on her death-bed she went to see her, and Mary, as she called her, asked her if she would take care of her two children, and that in reply to this address of Mrs. Chase she, Madam Jumel, said she would take care of her children and bring them up, educate them, and see to them, and that Mary died happy.

463 The complainant's counsel then read in evidence part of a deposition of said David Wilkie, taken in the said ejectment suit, on the part of the plaintiff therein in perpetuam. The part so read was as follows:

464 Supreme court.

GEORGE W. BOWEN
agst.
NELSON CHASE & JOHN PENFIELD.

GEORGE W. BOWEN
agst.
NELSON CHASE AND JOHN COLEMAN.

GEORGE W. BOWEN
agst.
NELSON CHASE AND JACOB GLEASON.

Court of common pleas for the city and county of New York.

GEORGE W. BOWEN AND ANN ELIZA VANDERVOORT
agst.
NELSON CHASE.

Examination of David Wilkie, taken under oath, in pursuance of an order made in the above-entitled action by the Hon. Hamilton W. Robinson, one of the judges of the court of common pleas for
465 the city and county of New York, made on the 20th day of February, 1871, to perpetuate the testimony of the witnesses respectively named in said order, of whom said David Wilkie is one.

The said DAVID WILKIE, being first duly sworn, doth testify, depose and say as follows:

Cross-examination:

52. Ques. During this first spell that you were with Madam Jumel, did you hear her speak of Mrs. Chase, then deceased?

Ans. Yes, sir.

53. Ques. Did she during that time speak of the deceased Mrs. Chase very frequently?

Ans. Very often; very often.

54. Ques. How did she speak of, and what did she say concerning her?

Ans. Always very kindly; talked highly of her all the time to me. She used to say she was her dear angel, and when she was on her deathbed she went to see her, and Mary (as she called her) asked her if she would not take care of her two children. "That's all I ask you to do," said Mrs. Chase. She always called her Mary, and that's how I got it.

55. Ques. Did Madam Jumel tell you what she said in reply to this address of Mary?

(Obj. to.)

Ans. Yes. She said that she would take care of the two children and bring them up, educate them and see to them, and Mary died happy.

466 Also, the letters of administration on the estate of Madam Jumel and the inventory of said estate, which were as follows:

467 The people of the State of New York to William B. Jones, the nephew of Eliza B. Jumel, and to William C. Wetmore, both of the city of New York, jointly send greeting:

Whereas said Eliza B. Jumel lately departed this life intestate, being, at or immediately previous to her death, an inhabitant of the county of

New York, by means whereof the ordering and granting administration of all and singular the goods, chattels, and credits whereof the said intestate died possessed in the State of New York, and also the auditing, allowing, and final discharging the account thereof, doth appertain unto us; and we, being desirous that the goods, chattels, and the credits of the said intestate may be well and faithfully administered, applied, and disposed of, do grant unto you, the said William B. Jones and William C. Wetmore, full power by these presents to administer and faithfully dispose of all and singular the said goods, chattels, and credits; to ask, demand, recover, and receive the debts which
468 unto the said intestate whilst living and at the date of her death did belong, and to pay the debts which the said intestate did owe, as far as such goods, chattels, and credits will thereunto extend and the law require; hereby requiring you to make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said intestate within a reasonable time, and return a duplicate thereof to our surrogate of the county of New York within three months from the date of these presents; and, if further personal property or assets of any kind not mentioned in any inventory that shall have been so made shall come to your possession or knowledge, to make, or cause to be made, in like manner, a true and perfect inventory thereof and return the same within two months after the discovery thereof, and also to render a just and true account of administration, when thereunto required; and we do by these presents depute, constitute, and appoint you, the said William B. Jones and William C. Wetmore, administrators of all and singular the goods, chattels, and credits of the said Eliza B. Jumel, deceased.

469 In testimony whereof we have caused the seal of office of the surrogate of said county to be hereunto affixed.

Witness Gideon J. Tucker, surrogate of said county, at the city of New York, the 22nd day of November, in the year of our Lord one thousand eight hundred and sixty-six, and of our Independence the ninety-first.

[L. S.] (Signed) GIDEON J. TUCKER,
Surrogate.

(Endorsed:) Copy. Letters of administration granted to Wm. B. Jones and Wm. C. Wetmore upon the goods, chattels, and credits of Eliza B. Jumel, deceased. Filed Oct. 10, 1874.

470 I do hereby certify that on the thirty-first day of October, in the year one thousand eight hundred and sixty-seven, W. C. Wetmore and W. B. Jones, administrators of the personal estate of Eliza B. Jumel, deceased, returned on his oath an inventory of the personal estate of the said deceased, which is filed in this office, and of which the annexed purports to be a duplicate.

WILLIAM W. SMITH,
Clerk to the Surrogate's Court.

[5-cent int. rev. stamp, cancelled.]

471 COUNTY OF NEW YORK,
Surrogate's Office, ss:

W. C. Wetmore, W. B. Jones, administrators of the estate of Eliza B. Jumel, deceased, being duly sworn, says that the annexed inventory is in all respects just and true; that it contains a true statement of all the personal property of the said deceased which has come to the

knowledge of the deponent, and particularly of all money, bank-bills, and other circulating medium belonging to the said deceased, and of all just claims of the said deceased against the deponent, to the best of the knowledge of the deponent.

W. C. WETMORE,
W. B. JONES,
Administrators.

Sworn this 31st day of October, 1867, before me—affirmed as to W. W. C. Wetmore, and sworn as to W. B. Jones.

JOHN T. CORNELL,
Comr. of Deeds.

472 COUNTY OF NEW YORK, *ss:*

I, C. E. Livingston, an appraiser, duly appointed by the surrogate of said county, do swear and declare that I will truly, honestly, and impartially appraise the personal property of Eliza B. Jumel, late of the county aforesaid, deceased, which shall be for that purpose exhibited to me, to the best of my knowledge and ability.

C. E. LIVINGSTON.

Sworn this 18th day of September, 1867, before me.

WM. W. SMITH,
Clerk to the Surrogate's Court.

COUNTY OF NEW YORK, *ss:*

I, Leonard Brown, an appraiser, duly appointed by the surrogate of said county, do swear and declare that I will truly, honestly, and impartially appraise the personal property of Eliza B. Jumel, late of the county aforesaid, deceased, which shall be for that purpose exhibited to me, to the best of my knowledge and ability.

LEONARD BROWN.

Sworn this 18th day of September, 1867, before me.

WM. W. SMITH,
Clerk to the Surrogate's Court.

A true and perfect inventory of all the goods, chattels, and credits, which were of Eliza B. Jumel, late of Carmansville, New York, de-
473 ceased, made by the administrators of the estate of said deceased, with the aid and in the presence of C. E. Livingston and L. Brown, they having been duly appointed and sworn as appraisers, containing a full, just, and true statement of all the personal property of the said deceased which has come to the knowledge of the said administrators of said estate, and particularly of all moneys, bank-bills, and other circulating medium belonging to the said deceased, and of all just claims of the said deceased against said administrators, and of all bonds, mortgages, notes, and other securities for the payment of money belonging to the said deceased, specifying the names of the debtor in each security, the date, the sum originally payable, the indorsements thereon, with their dates, and the sum which, in the judgment of the appraisers, may be collectable on such security.

Upon the completion of this inventory, duplicates thereof have been made and signed at the end thereof by the appraisers.

474 *Inventory and appraisement of the personal estate of Eliza B. Jumel, deceased.*

Died.

HOUSEHOLD-FURNITURE.—TEA-ROOM.

6 silk figured sitting chairs, $5.00 ea	30	
8 " " arm " $6.50 "	52	
1 " " sofa	40	
1 Mosaic table, $10.00; 2 marble-top pier-stands, $12 ea	34	
1 card table, $4; 2 looking glasses, $3.50 ea	11	
1 chandelier	3	50

DRAWING-ROOM.

1 card-table, $2; 2 Mosaic tables, $10 ea	22	
12 chairs, (oak with yellow cushions,) $3.00 ea	36	
1 sofa, $35; 1 card-table, $4; 1 marble-top centre-table $12.	51	
2 pier-stands, one $15 one $10	25	
4 yellow-seated mahogany chairs, $3.00	12	
1 looking-glass, $10.00; one small table, $1.25	11	25

LIBRARY.

1 book-case, $12.00; 1 rocking-chair, (reps,) $3.00	15	
1 arm-chair, (reps,) $2.00; 3 chairs, mahogany, $1.50 ea	6	50
1 mahogany table, $4.50; 1 folding table with drawers, $6.00.	10	50
1 chandelier	1	25
Carried forward	$359	00
475 Brought forward	$359	00

DINING-ROOM.

1 dining-table, (mahogany, $15,) 5 hair-cloth chairs, $2.50	27	50
6 cane-seated chairs, $1.50; 2 looking-glasses, $4.50 ea	18	
2 sideboards, (one large, $20.00, on' small, $12.00;) sofa-bedstead, $18	50	
2 divans, $4.50 ea.; 1 chandelier, $2.00; 1 closet, (out of repair,) $5.00	16	

S. E. BED-ROOM.

1 mahogany wardrobe, $18; 1 set drawers, (imitation mahog'y,) $6.00	14	
3 chairs, $1.50 ea.; 1 washstand, $2.00; table with drawers, $3.00	9	50
1 looking-glass	2	

S. W. BED-ROOM.

6 chairs, $1.80 ea.; 1 wardrobe, mahogany, $5.00	15	80
2 looking-glasses, $4.50 ea.; 2 sideboards, $6.00 ea	21	
1 mahogany table, $4.00; 1 chandelier, 50c	4	50

UPPER HALL.

1 arm-chair, $4.00; 1 rocking-chair, $3.00; 4 hair-bottom chairs, $1.25 ea	12	
1 mahogany table, $3.00; 1 sideboard, $6.50; 1 looking-glass, $4.00	13	50

COTTAGE-ROOM.

1 wash-stand, $4.00; 1 table, $6.00	10	

WASHINGTON HOME.

1 old fashioned veneered bedstead	15	
2 sets of drawers, one large, $8.00, one small, $3.00	11	
Sofa, (old,) $3.00; 4 hair-bottom chairs, $3.00 ea	15	
1 night-table, $2.00; 1 looking-glass, $5.00	7	

HALL BED-ROOM.

2 iron bedsteads, 3.00 ea.; 1 mahog'y bedstead, (broken,) $3.00	9	
Carried over	$629	80
476 Brought over	$629	80

CHINA & GLASS WARE.

2 china hanging vases at $2.00 ea	4	
1 imitation old china soup-tureen	5	
1 sauce-dish	1	50
1 " boat, gilt china	1	50
1 side dish	1	
French china set, composed of 5 pieces	6	
11 old chairs	22	
27 gilt French china set	1	50
Foot-bowl	1	
4 French gilt cups & saucers	1	50
10 small coffee-cups & saucers	1	50
4 white china plates		75
6 glass goblets of different patterns, 10c. ea		60
5 common wine glasses, 5c. "		25
8 imitation Bohemian wine-glasses, 25c. "	2	00
6 glass side dishes, 20c	1	20
6 finger-glasses, 15c		90
6 knives & forks, different patterns, 4c		24
1 bunch-bowl, (Bohemian)	3	
Bohemian glass with tray	2	50
2 do. do. white & pink	6	
4 colored china vases, $3.00; 2 do. do., $2.00	5	
3 do. do. $3.00	3	
Carried forward	$701	74
477 Brought forward	$701	74

SILVER-PLATED WARE.

1 tureen and spoon	10	
6 dishes	6	
4 2-square side dishes	5	
2 cake-baskets	3	
1 castor, incomplete	2	50
1 egg-castor & gilt spoon	2	
1 toast-rack	1	50
4 stands of plate	1	50
1 fruit-stand	28	
1 tray	5	
1 water-pitcher	10	
1 tea-pot, 1 coffee-pot, 1 slop-bowl, 1 sugar-basin, and 1 cream-pot	20	
1 water-urn	18	
1 sugar-bowls	2	
2 tea-set with 12 china cups & saucers	30	

GILT-PLATE WARE.

1 coffee-pot	5	
2 cups & saucers	1	
2 trays consisting of seven slabs	3	
2 large china vases, gilt & painted, with gilt stand, $6 each.	12	

HOUSE-LINEN.

8 mattrasses, wool & hair, (large,) $3 ea	24	
2 small do. wool $1.50 "	3	
4 straw do. large $2.00 "	8	
2 " " small $1 "	2	
Carried over	$904	24

478	Brought over	$904	24

WARDROBE.

Wearing-apparel, valued at	50	

KITCHEN.

Kitchen utensils, valued at	10	

STOCK, &C.

2 gray horses, $30 ea	60	
1 barouche	20	
1 old-fashioned barouche	15	
1 box town-wagon	5	
1 cart	2	

OIL-PAINTINGS.

1 Andimio & Diana	20	
1 Pope Pius IX	4	

1 Spanish Prince with his nurse	3 50
1 Joseph and his dream	16
1 Napoleon 1st on the throne	3
1 Beggar-boy and dog	8
1 Castle and grounds of Trianon	2 50
1 Large family-picture (not appraised)	
1 Napoleon at St. Helena	1 50
1 Mademoiselle de Lavillier	5
6 Marine views, $3 ea	18
1 Antonio & Cleopatra	12
1 Holy family	15
Carried forward	$1,173 74

479 Brought forward $1,173 74

OIL-PAINTINGS—(Continued.)

3 Paysage sceneries, $3 ea	9
1 Queen of olden times	1
2 Ruins of Rome, $2 ea	4
1 The Israelites gathering the manna	12
1 David and his daughter before the Ark	10
1 General Washington	3
1 Eurodia with the head of John the Baptist	5
1 Battle in Africa between the French & Arabs	2
1 Water-mill	1
1 View of the River Rhine	1
1 Lord Darnley & Mary Queen of Scots	2
1 Henry IVth of France at the Fountain	1 50

ENGRAVINGS.

4 (colored) farm-scenes, at $2 ea	8
1 Louis Napoleon	1 50
1 Napoleon Bonaparte	75
1 (colored) Briton's family at prayers	1
1 Rev'd Wm. Hardenburgh	1
Crayon drawing	1 25
Carried over	$1,238 74

480 Brought over $1,238 74

Money in bank at the death of intestate 3,645 48

Bond & mortgage made by Dewitt C. Ward & wife, to the intestate, dated the 22d day of June, 1864, to secure the payment of $16,000 in ten years from date with interest at 6 per cent. int 18,240 00

Paid up to 22d June, 1865, leaving 2 years 4 mos. int. due.

One promissory note for $3,000 dated the day of , 1865, made by Mary Ann Isaacs, payable to the intestate months after date with interest, but considered nominal.

Total appraised valuation $23,124 22

C. E. LIVINGSTON,
L. BROWN,
Appraisers, New York.

481 (Endorsed:) Surrogate's office, county of New York. In the matter of the personal estate of Eliza B. Jumel, deceased. Inventory and appraisement.

482 U. S. circuit court, southern district of N. Y.

NELSON CHASE
vs.
GEORGE W. BOWEN. } Before Hon'l Judge Blatchford, April 28th, 1874.

JOHN E. BURRILL, a witness called on behalf of plaintiff, being duly sworn, testifies:

By Mr. O'Conor:

Mr. O'CONOR. If your honor please, the deed of appointment executed by Madam Jumel has been put in evidence from the bill of exceptions, where it is only a copy. We wish to produce the original.

Mr. CHATFIELD. Is it not an accurate copy?

Mr. O'CONOR. Perfectly.

Mr. CHATFIELD. Then what is the object of it?

Mr. O'CONOR. There is a confusion of names, and I wish to identify it. It is perhaps necessary to furnish satisfactory evidence to your honor that this paper was executed in the presence of two subscribing witnesses, which is a fact, perhaps, that we ought to show.

(Mr. O'Conor put in evidence the original deed of appointment,
483 which was marked by the court "Plaintiff's Exhibit No. 14, April 28th, 1874. S. B.")

Q. Where do you reside?

A. In this city.

Q. What is your occupation?

A. Counsellor at law.

Q. Did you know Mr. Alexander M. Burrill, formerly of the city of New York?

A. I did. He was an uncle of mine.

Q. Is he living?

A. He is dead.

Q. Did you ever see him write?

A. I did.

Q. Were you acquainted with his handwriting?

A. I was.

Mr. CHATFIELD. What is the object of this?

The COURT. He is a subscribing witness.

Mr. CHATFIELD. We admit that; there is no need of that.

Mr. O'CONOR. I prefer to prove it.

WITNESS. I am familiar with his handwriting, and that is his signature.

Q. That signature at the foot of Exhibit No. 14 is his signature?

A. Yes, sir.

The original deed of appointment above mentioned was as follows:

484 Recorded for and at the request of M. Werckmeister, this 21st Nov., 1828, at 10 min. past 3 o'clock p. m.

Whereas Mary Jumel Bownes, of the city of New York, by two several indentures, one bearing date the eleventh day of December, in the year of our Lord one thousand eight hundred and twenty-seven, and

the other bearing date the thirteenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, did convey to Michael Werckmeister, of the same city, merchant, all that certain lot of land and premises which in a certain indenture, made between Gerardus Post and Susan, his wife, and Stephen Jumel, bearing date the third day of May, in the year one thousand eight hundred & fourteen, and described as follows: All that certain lot, piece, or parcel of land, situate, lying, and being at Harlem Heights, in the Ninth ward of the city of New York, as follows: Beginning at the northwest corner of the Albany post-road, at the land now or late of Mrs. Bauer, and thence running along the said road south fifteen degrees west one hundred and ninety-one feet, south eight degrees thirty minutes west two hundred and eighty-six feet, south ten degrees fifteen minutes west
485 two hundred and seventy feet, south five degrees west five hundred feet; thence south fifty-six degrees thirty minutes east nine hundred and fifty feet to the middle of the Fifth avenue, laid out by the commissioners; thence running along the said avenue north thirty-two degrees thirty minutes east nine hundred and eighty feet to Mrs. Bauer's line; thence north fifty-one degrees west along the fence fifteen hundred and twenty feet to the post-road and place of beginning, containing twenty-nine acres and two rods, and bounded on the north by land now or late of said Mrs. Bauer, and on the south by lot number seven, on the east by lots number fifteen, fourteen, thirteen, and part of lot number twelve, on the west by the Albany post-road and number six, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situated at Harlem Heights, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abagail, his wife, conveyed to the said Leonard Parkinson by a certain indenture bearing date the twenty-seventh day of August, in the year one thousand seven hundred and ninety-nine, and recorded in the office of the clerk of the city and
486 county of New York, in lib. number fifty-seven of conveyances, &c., page 354, the twenty-first day of January, in the year one thousand eight hundred; and in the secretary's office of the State of New York, in lib. deeds, endorsed M. R., page 110, &c., the twenty-fourth day of January, in the year one thousand eight hundred and three, reference being thereunto had will more fully appear. Also all that certain other lot of land and premises which in a certain indenture made between Murray Hoffman, one of the masters of the court of chancery of the State of New York, and Francis Beyer, bearing date the thirtieth day of October, in the year one thousand eight hundred and twenty-one, are described as follows: All that certain lot of land situate at Harlem Heights, in the Ninth ward of the city and county of New York, as follows, to wit: Beginning at the Albany post-road, at the northeast corner of lot number four, and running north sixty-three degrees fifteen minutes west sixteen hundred and ninety feet to the Hudson River; thence north forty-five degrees west three hundred feet; north twenty-four degrees twenty-five minutes west two hundred
487 and ninety feet; north fifteen degrees east two hundred and ten feet; north fifty degrees forty-five minutes west ninety-one feet; north fifteen degrees thirty minutes east one hundred and eighty-three feet to the lands of Arden's; thence south seventy-one degrees thirty minutes east, along Arden's line, two thousand one hundred and sixty feet to the Albany post-road and northeast corner of lot number five; thence along the road south fifteen degrees west four hundred and

sixty-seven feet; south nine degrees west two hundred and eighty-one feet; south twelve degrees west two hundred and eighty-eight feet to the place of beginning, containing thirty-nine acres, one rood, and bounded on the north by Arden's land, on the west by Hudson River, on the south by lot number 4, and on the east by the Albany post-road, and numbered five, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, situated at Harlem Heights, March the first, one thousand eight hundred and ten. Also, all that certain other piece or parcel of land situate in the Second ward of the city of New York, and which was conveyed to the said Stephen Jumel by Daniel Ludlow and Rem. P. Remsen, late of
488 the city of New York, merchants, surviving trustees of the estate of the late David Provost, of the city of New York, deceased, by an indenture bearing date the first day of May, A. D. 1812, and recorded in the office of register in and for the city and county of New York, in lib. No. 97 of conveyances, &c., page 394, and which said piece or parcel of land is described in said indenture as follows: All that certain messuage and premises situate at the corner of Broadway and Liberty street, in the city of New York, being part of the said real estate whereof the said David Provost died seized, and is described in a conveyance thereof to the said David Provost from James Duncan and Elizabeth, his wife, bearing date the thirtieth day of May, 1758. By all that certain corner dwelling-house, store-house, and lot of ground thereunto belonging, situate and being on the east side of the Broadway, in the city of New York, containing in breadth in front twenty-six feet or thereabouts, be it more or less, and in the rear twenty-five feet, more or less, and in length on both sides one hundred and ten feet, more or less; bounded in front west by the Broadway, east by the ground of the heirs of William D'Count, deceased, or their assigns; south by Crown or Duke street, being on the north side thereof; and
489 north by the house and ground now or late in the possession of Richard Tripp Cooper, which heretofore belonged to one Lieutenant Buckley, deceased, together with one-half of the wall of the house late of the said Buckley, as also a passage-way or alley, from the nearest part of the lot thereby granted, of four feet in breadth, and is in the rear of the said lot, which formerly was a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture of lease and release bearing date the first and second days of November, 1747, as by the said indenture, reference being thereunto had, will more fully and at large appear. And also all that other piece or parcel of land situate in the ward of the said city of New York, and which was conveyed to the said Stephen Jumel by Mary Haight, John E. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, late of the city of New York, in the State of New York, saddler, deceased, by an indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned piece or parcel of land is described in said last-mentioned indenture as follows: All that certain piece or
490 parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground, and running thence southerly twenty-three feet or thereabouts, thence westerly twenty feet, thence northerly fifteen feet or thereabouts, thence easterly six feet, thence northerly eight feet, thence easterly fourteen feet to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie, southerly by ground now or late belonging to the said Stephen Jumel, westerly by ground belonging

to the heirs of the said testator, and northerly partly by ground belonging to the said heirs of the said testator, and partly by ground now or late belonging to the heirs of one Richard Kip, deceased, as by the annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear. And also all that certain other lot, piece, or parcel of land situate, lying, and being at Harlem Heights in the ward of the city of New York, as follows: Beginning at the southwest corner of the land at the Albany post-road, and running along Beekman's land south sixty degrees east three hundred and seventy feet south sixty-five degrees thirty minutes east one hundred and
491 forty feet, south sixty degrees east three hundred and thirty-five feet to Harlem River; thence along Haerlem River north fifty-six degrees east ninety-five feet, north thirty-four degrees thirty minutes east one hundred and twenty-nine feet, north twenty degrees ten minutes east two hundred and twenty-two feet, north fifty-seven degrees twenty-five minutes east two hundred and seventy feet, north forty-three degrees thirty minutes east one hundred and sixty feet, north twenty-five degrees east one hundred and forty feet, north ten degrees fifty minutes east three hundred and eighty feet to George Wear's land; thence up the hill along George Wear's land north forty-seven degrees forty-five minutes west seven hundred and twenty-nine feet, north forty-seven degrees west two hundred and eighty feet, north fifty degrees west three hundred and ninety feet, north six degrees west seventy-six feet to the Albany post-road; thence along the said road south fourteen degrees fifteen minutes west three hundred and forty feet, south seven degrees west two hundred and sixty feet, and south one hundred and forty feet, south one degree thirty minutes west two hundred and twenty-seven feet, south four degrees thirty minutes west one hundred and
492 fifteen feet, south twelve degrees thirty minutes west one hundred and eighty feet, south twenty-two degrees thirty minutes west one hundred and seventy feet, south twenty degrees thirty minutes west three hundred and three feet to the place of beginning, containing thirty-six acres and one rood, and bounded on the north by the land of George Wear, on the east by Haerlem River, on the south by Beekman's land, and on the west by the Albany post-road, and numbered eight according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situate at Haerlem Heights aforesaid, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigail, his wife, conveyed to the said Leonard Parkinson by a certain indenture bearing date the twenty-ninth day of August, in the year one thousand seven hundred and ninety-nine, and recorded in the office of the clerk of the city and county of New York, in liber No. 57 of conveyances, &c., page 354, the twenty-first day of January, one thousand eight hundred and , in the secretary's office of the State of New York, in liber deeds,
493 endorsed M. R., page 110, &c., the twenty-fourth day of January, one thousand eight hundred and twenty-three, reference being thereunto had will more carefully appear; together with all and singular the tenements, hereditaments, and appurtenances whatsoever unto the said above-mentioned and described premises in anywise appertaining or belonging, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said Mary Jumel Bownes of, in, and to the same and every part and parcel thereof, with the appur-

tenances, to have and to hold the above-granted, bargained, and described premises, and every part and parcel thereof, with the appurtenances, unto the said Michael Werckmeister, his heirs and assigns forever; in trust, among other trusts, that the said Michael Werckmeister, or his assigns, lease, demise, let, and convey, assure, and dispose of all and singular the said above-described premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, intents, and purposes, and in such manner and form as Eliza Brown Jumel, the wife of Stephen Jumel, late of the city of New York, now
494 of Paris, in France, notwithstanding her present or future coverture as if she were a feme sole, shall by any instrument in writing executed in the presence of any two credible witnesses order, direct, limit, and appoint. Now I, the said Eliza Brown Jumel, do hereby order, direct, limit, and appoint that immediately after my decease the said Michael Werckmeister, or his heirs, convey all and singular the said above described premises to such person or persons and to such uses and purposes as I, the said Eliza Brown Jumel, shall by my last will and testament under my hand, and executed in the presence of two or more witnesses, designate and appoint, and for want thereof, then that he convey the same to my husband, Stephen Jumel, in case he be then living, for and during his natural life, subject to an annuity to be charged thereon during his said natural life of six hundred dollars, payable to Mary Jumel Bownes, and after the death of my said hasband, or in case he shall not survive me, then immediately after my own death then to her, the said Mary Jumel Bownes, and her heirs, in fee.

In witness I, the said Eliza Brown Jumel, have hereunto set my
495 hand and seal this twenty-first day of November, in the year one thousand eight hundred and twenty-eight.

ELIZA B. JUMEL. [L. S.]

Sealed and delivered in the presence of—
ALEX. M. BURRILL.
WILLIAM KENT.

CITY AND COUNTY OF NEW YORK, *ss:*

On this twenty-first day of November, in the year one thousand eight hundred and twenty-eight, before me personally appeared the within-named Eliza Brown Jumel, to me known to be the person described in the foregoing deed, and in my presence signed, sealed, and delivered the same to the uses and purposes therein mentioned.

Whereupon I allow said deed to be recorded.

WILLIAM KENT,
Commissioner to take ackts. of deeds, &c.

OFFICE OF THE REGISTER OF DEEDS, &C.,
City and County of New York, ss:

I have compared the annexed copy with an instrument recorded in this office on the 21st day of November, A. D. 1828, at 3 o'clock 10 min. p. m., in liber 243 of conveyances, page 70, and certify the same
496 to be a correct transcript therefrom and the whole of said instrument.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 23d day of November, 1867.

CHAS. J. HALPIN,
Register.

(Endorsed:) Eliza B. Jumel to Michael Werckmeister. Appointment. Dated November 21, 1828. Der't's Ex. B. Jan'y 27, '73. R. E. S.

497 HENRY E. DAVIES, a witness, called on behalf of the plaintiff, being duly sworn, testifies:

By Mr. O'Conor:

Q. What is your residence?
A. I reside in the city of New York.
Q. Your occupation?
A. Counsellor at law?
Q. Formerly judge of the court of appeals?
A. Yes, sir.
Q. Were you acquainted with William Kent, formerly of the city of New York, counsellor at law and circuit judge?
A. I was well acquainted with him. He was a partner in business of mine for some years.
Q. Have you often seen him write?
A. Yes, sir.
Q. Intimate with his handwriting?
A. Perfectly well acquainted with it.
Q. (Handing witness plaintiff's Exhibit No. 14.) Please look at the paper now shown you, marked "Exhibit No. 14," and say whether that is his signature as subscribing witness to that paper.)
(Objected to.)
Q. Is he living?
A. He is not; he died in January, 1871.
Q. Now, the other question?
A. That is his signature to both of these.

498 By Mr. Chatfield:

Q. Do you know the signature of the maker of that instrument?
A. I don't think I have ever seen her write, but I have seen what has purported to be her signature, but I don't remember to have seen her write.

By Mr. O'Conor:

Q. She was a visitor at your house, was she not?
A. I think she was a visitor of Judge Kent's, and I think I have seen her at our office after I have been in business with him.
Q. But you never saw her write?
A. I never saw her write that I remember.
(Plaintiff's counsel states that plaintiff's Exhibit No. 14 is to be considered as read.)

499 JAMES M. MILLER, a witness, called on behalf of plaintiff, being duly sworn, testifies:

By Mr. Carter:

Q. You reside in the city of New York?
A. Yes, sir.
Q. And are a broker—an auctioneer?
A. Real-estate auctioneer.
Q. How long have you been such in the city of New York?
A. Thirty-four years.
Q. Do you consider yourself familiar with the value of real estate in New York City?
A. Yes, sir.
Q. Do you know the property at the northeast corner of Broadway and Liberty street?

A. Yes, sir.
Q. How long have you known that property?
A. Over forty years.
Q. You have known it as Madam Jumel's property?
A. Yes, sir.
Q. I carry your mind back to the year 1865, say July, 1865; what, in your judgment, was the fair value of that property at that time?
(Objected to as immaterial.)
500 The COURT. It is immaterial if the plaintiff has no right to recover, but if the plaintiff's theory in his bill is right, then this evidence is material.
Mr. CHATFIELD. In what respect, unless the court can see they can set off the property sold to Kingsland and Martin? then of course it cannot be material.
The COURT. If they can, then it is material. I have got to decide, as one of the main issues in the case, whether they can or not.
Mr. CHATFIELD. I suppose it is perfectly apparent at the first blush that it is not.
The COURT. I must hear the whole case before I can pass upon this evidence. If it is immaterial and important to the plaintiff's case (and it certainly is if the plaintiff's theory is right) to prove those facts, I don't see any other way of proving it, but I will take this evidence as I have taken all the other evidence, subject to the objection, to be struck out if the court should agree with the counsel for the defendant.
Q. What, in your judgment, was the fair value of that property, say in July, 1865?
A. I think the fair value of that property in 1865 was from $120,000 to $125,000.
501 Were you about that time familiar with sales of property in that neighborhood?
A. Yes, sir; there were very few sales in the neighborhood, but the only sales I made of Mr. Gerran's property on the same side was property below Liberty street, two buildings, *buildings* where the old gentleman lived ever since I was a boy; those I sold.
Q. You made those sales?
A. Yes, sir.
Q. I will ask you this general question. How did the property ten years before that time, say in May, 1854, compare with that which you have just stated?
A. I scarcely can remember a sale at that time on Broadway.
Q. In general, was it greater or less?
A. Oh, much less.
Q. And at all times previously, it was less?
A. Yes, sir; at all times previously.

By the court:

Q. All times previously to July, 1865, you mean?
A. Yes, sir.

Cross-examined by Mr. Chatfield:

Q. How is it now?
A. No sale has been made since that I can recollect.
Q. What is the value of this property in question now, according to your best judgment?
502 A. Adding all the improvements and the expense accrued on the building, I should think it was worth $225,000 to-day.
Q. Do you know the size of that property?

A. I think I do. (Witness refers to memorandum.) I think the lot is twenty-five feet front, from memory.

By Mr. O'Conor:

Q. On Broadway?

A. On Broadway.

By Mr. Chatfield:

Q. Now, the depth.

A. I had a draft of it at my office. I should think about one hundred feet. (Witness refers to memorandum.) It is twenty-five feet front by one hundred and ten feet on Liberty street.

Q. There is something more of it, is there not?

A. It is wider in the extreme rear on Liberty street by a few feet than it is on Broadway.

Q. Is there not an L there?

A. A small L.

Q. Is that not over thirty feet on Broadway?

A. No, sir; twenty-five feet according to my recollection. It is probably thirty feet in the extreme rear on Liberty street.

Q. Do you know whether that is all in one piece, or two parcels now, making the entire property?

503 A. Not now, I do not.

Q. They are covered by two separate deeds?

A. That I don't know.

Q. Did you know anything about the property during the life of Mr. Jumel?

A. No, sir; only he had the reputation of owning it when I was a boy.

Q. And his wife after that date had that reputation?

A. That I don't remember.

Mr. O'Conor. There are two deeds already in evidence by copies from the bill of exceptions, which are deeds to Werckmeister from Mary Jumel Bowne or Bownes, as she is called. If you will be good enough to mark the originals which we hand you now, I will prove by a witness a single fact about them which may be relevant. That is all I want to prove.

(Mr. O'Conor put the deeds in evidence, which were marked by the court, "Plaintiff's Exhibits No. 15 and 16, April 28th, 1874. S. B.")

504 The complainant's counsel then read in evidence the two original deeds, already in evidence by copies, to Werckmeister from Mary Jumel Bownes, for the purpose of proving a fact in connection therewith. They were marked "Exhibits 15 and 16," and are as follows:

505 This indenture, made the thirteenth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, between Mary Jumel Bownes, of the city of New York, of the first part, and Michael Werckmeister, of the same city, merchant, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to her in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and, by these presents, doth grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot, piece, or parcel of land, situate, lying, and being at Harlem Heights, in the ward of the city of New York, as follows: Beginning at the southwest corner of the land at the Albany post-road, and

running along Beekman's land south sixty degrees east three hundred and seventy feet; south sixty-five degrees thirty minutes east
5 one hundred and forty feet; south sixty degrees east three hundred and thirty-five feet to Harlaem River; thence along Haerlem River north fifty-six degrees east ninety-five feet; north thirty-four degrees thirty minutes east one hundred and twenty-nine feet; north twenty degrees ten minutes east two hundred and twenty-two feet; north fifty-seven degrees twenty-five minutes east two hundred and seventy feet; north forty-three degrees thirty minutes east one hundred and sixty feet; north twenty-five degrees east one hundred and forty feet; north ten degrees fifty minutes east three hundred and eighty feet to George Wear's line; north forty-seven degrees forty-five minutes west seven hundred and twenty-nine feet; north forty-seven degrees west two hundred and eighty feet; north fifty degrees west three hundred and ninety feet; north six degrees west seventy-six feet to the Albany post-road; thence along the said road south fourteen degrees fifteen minutes west three hundred and forty feet; south seven degrees west two hundred and sixty feet; due south one hundred and forty feet; south one degree thirty minutes west two hundred and twenty-seven feet; south four degrees thirty minutes west one hundred and fifteen feet; south twelve degrees thirty minutes west
507 one hundred and eighty-eight feet; south twenty-two degrees thirty minutes west one hundred and seventy feet; south twenty degrees thirty minutes west three hundred and three feet to the place of beginning, containing thirty-six acres and one rood, and bounded on the north by the land of George Wear, on the east by Harlaem River, on the south by Beekman's land, and on the west by the Albany post-road, and numbered eight, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situate at Harlaem Heights aforesaid on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigail, his wife, conveyed to the said Leonard Parkinson by a certain indenture bearing date the twenty-ninth day of August, in the year one thousand seven hundred and ninety-nine, and recorded in the office of the clerk of the city and county of New York, in lib. No. 57 of conveyances, &c., page 354, the twenty-first day of January, one thousand eight hundred, and in the secretary's office of the State of New
508 York in lib. deeds endorsed M. R. page 110, &c., the twenty-fourth day of January, one thousand eight hundred and three, reference being thereunto had will more fully appear, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use and behoof forever. In trust nevertheless for the uses and purposes hereinafter mentioned, expressed and declared, that is to say: In trust, that the said party of the second part and his heirs, collect and receive the rents, issues, and profits of the said above-described and hereby conveyed premises and every part and parcel thereof, and pay over the same unto Eliza Brown Jumel, (the wife of Stephen Jumel, late of the

509 city of New York, now of Paris, in France,) or, at her election, suffer and permit her, the said Eliza Brown Jumel, to use, occupy, and possess the said premises, and to have, take, collect, receive, and enjoy the rents, issues, and profits thereof, to and for her own separate use and benefit, and to and for such other uses and purposes as the said Eliza Brown Jumel shall please and think fit at her own free will and pleasure, and not subject to the control and interference of her present or any future husband, and the receipt and receipts of her, the said Eliza Brown Jumel, shall, at all times, be good and sufficient discharges for such payments, and for such rents and profits to him, the said party of the second part, his heirs, executors and administrators, and to the person and persons, who are and shall be liable to pay the same.

And upon this further trust, that the said party of the second part, or his heirs, lease, demise, let and convey, assure, and dispose of all and singular the said above-described premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, intents and purposes, and in such manner and
510 form as she, the said Eliza Brown Jumel, notwithstanding her present or any future coverture, as if she were a feme sole, shall by any instrument in writing, executed in the presence of any two credible witnesses, order, direct, limit and appoint, and in case of an absolute sale of said premises, or of any part thereof, to pay over the purchase-money to the said Eliza Brown Jumel, or invest the same as she shall order and direct. And upon this further trust, upon the decease of the said Eliza Brown Jumel, to convey the said above-described premises, or such parts thereof as shall not have been previously conveyed by the said party of the second part, or his heirs, and with respect to which no direction or appointment shall be made by the said Eliza Brown Jumel in her life-time, to the heirs of the said Eliza Brown Jumel in fee-simple, and pay over to the heirs of the said Eliza Brown Jumel such monies as shall remain in the hands, or under the control of, the said party of the second part or his heirs, arising from collections of the rents and profits, or the proceeds of the sales of thes aid above-described premises, or any part thereof. Provided, however, that the said party of
511 the second part, and his heirs, shall be at liberty at all times to deduct and retain all reasonable and necessary costs, charges, and expenses attending the execution of the trusts hereby reposed.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

MARY JUMEL BOWNES. [L. S.]
M. WERCKMEISTER. [L. S.]

Sealed and delivered in the presence of—
W. C. WETMORE.

STATE OF NEW YORK,
City and County of New York, ss:

On the thirteenth day of May, A. D. 1828, before me personally appeared Mary Jumel Bownes, and Michael Werckmeister, to me known to be the same persons described in and who have executed the foregoing indenture, and they severally duly executed and acknowledged the same as their act and deed. I therefore allow it to be recorded.

W. C. WETMORE,
Comm'r, &c.

Recorded in the office of register in and for the city and county of New York, in liber No. 243 of conveyances, page 75, this 21st Nov'r, 1828, at 10 min. past 3 o'clock p. m.

Exam'd by

512 JAS. W. LENT,
Register.

(Endorsed:) Copy. Mary Jumel Bownes to Michael Werckmeister Deed. Dated May 13, 1828. Conveys lot No. 8, in trust for Madame Jumel. "No. 15, April 28, 1874. S. B."

513 (Copy.)

This indenture, made this eleventh day of December, in the year of our Lord one thousand eight hundred and twenty-seven, between Mary Jumel Bownes, of the city of New York, of the first part, and Michael Werckmeister, of the same city, merchant, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States of America, to her in hand paid at and before the ensealing and delivery of these presents by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents hath granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, enfeoff, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all that certain lot of land and premises which, in a certain indenture made between Gerardus Post and Susan, his wife, and Stephen Jumel, bearing date the third day of May, in the year one thousand eight
514 hundred and fourteen, are described as follows: "All that certain lot, piece, or parcel of land situate, lying, and being at Haerlem Heights, in the Ninth ward of the city of New York, as follows: Beginning at the northwest corner of the Albany post-road, at the land now or late of Mrs. Bauer, and thence running along the said road south fifteen degrees west one hundred and ninety-one feet, south eight degrees thirty minutes west two hundred and eighty-six feet south ten degrees fifteen minutes west two hundred and seventy feet, south five degrees west five hundred feet; thence south fifty-six degrees thirty minutes east nine hundred and fifty feet to the middle of the Fifth avenue, laid out by the commissioners; thence running along the said avenue north thirty-two degrees thirty minutes east nine hundred and eighty feet to Mrs. Bauer's line; thence north fifty-one degrees west, along the fence, fifteen hundred and twenty feet to the post-road and place of beginning, containing twenty-nine acres and two rods, and bounded on the north by land now or late of said Mrs. Bauer, and on the south by lot number seven, on the east by lots number fifteen, fourteen, thirteen, and part of lot number twelve; on
515 the west by the Albany post-road, and number six, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, esquire, situated at Harlem Heights, on the first day of March, in the year one thousand eight hundred and ten, and being part of the lands which William Kenyon, of the city of New York, merchant, and Abigail, his wife, conveyed to the said Leonard Parkinson by a certain indenture bearing date the twenty-seventh day of August, in the year one thousand seven hundred and ninety-nine, and

recorded in the office of the clerk of the city and county of New York, in lib. number fifty-seven of conveyances, &c., page 354, the twenty-first day of January, in the year one thousand eight hundred, and in the secretary's office of the State of New York, in lib. deeds endorsed M. R., page 110, &c., the twenty-fourth day of January, in the year one thousand eight hundred and three," reference being thereunto had, will more fully appear.

Also all that certain other *other* lot of land and premises, which in a certain indenture made between Murray Hoffman, one of the masters of the court of chancery of the State of New York, and Francis Berger, bearing date the thirtieth day of October, in the year one
516 thousand eight hundred and twenty-one, are described as follows:

"All that certain lot of land situate at Haerlem Heights, in the Ninth ward of the city and county of New York, as follows, to wit: Beginning at the Albany post-road at the northeast corner of lot number four, and running north sixty-three degrees fifteen minutes west sixteen hundred and ninety feet to the Hudson River; thence north forty-five degrees west three hundred feet, north twenty-four degrees twenty-five minutes west two hundred and ninety feet, north fifteen degrees east two hundred and ten feet, north fifty degrees forty-five minutes west ninety-one feet, north fifteen degrees thirty minutes east one hundred and eighty-three feet to the land of Arden's; thence south seventy-one degrees thirty minutes east along Arden's line two thousand one hundred and sixty feet to the Albany post-road and northeast corner of lot number five; thence along the road, south fifteen degrees west four hundred and sixty-seven feet, south nine degrees west two hundred and eighty one feet, south twelve degrees west two hundred and fifty-eight to the place of beginning, containing thirty-nine acres one rood, and bounded on the north by Arden's land, on the west by Hudson River, on
517 the south by lot number four, and on the east by the Albany post-road and number five, according to a map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, situated at Haerlem Heights, March the first, one thousand eight hundred and ten."

Also all that certain other piece or parcel of land situate in the Second ward of the city of New York, and which was conveyed to the said Stephen Jumel by Daniel Ludlow and Rem P. Remsen, late of the city of New York, merchants, surviving trustees of the estate of the late David Provost, of the city of New York, deceased, by an indenture bearing date the first day of May, A. D. 1812, and recorded in the office of register in and for the city and county of New York, in lib. No. 97 of conveyances, &c., page 394; and which said piece or parcel of land is described in said indenture as follows:

"All that certain messuage and premises situate at the corner of Broadway and Liberty street, in the city of New York, being part of the said real estate whereof the said David Provost died seized, and is described in a conveyance thereof to the said David Provost from
518 James Duncan and Elizabeth his wife, bearing date the thirtieth day of May, 1758, by all that certain corner dwelling-house, storehouse, and lot of ground thereunto belonging, situate and being on the east side of the Broadway, in the city of New York, containing in breadth in front twenty-six foot or thereabouts, be it more or less, and in the rear twenty-five foot, more or less, and in length on both sides one hundred and ten foot, more or less, bounded in front west by the Broadway, east by the ground of the heirs of William De Count, deceased,

or their assigns; south by Crown or Duke street, being on the north side thereof; and north by the house and ground now or late in the possession of Richard Tripp Cooper, which heretofore belonged to one Lieutenant Buckley, deceased, together with one-half of the wall of the house late of the said Buckley, as also a passage-way or alley from the nearest part of the lot thereby granted, of four feet in breadth, and is in the rear of the said lot, which formerly was a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture of lease and release, bearing date the first and second days of November, 1747," as by the said in-
519 denture, reference being thereunto had, will more fully and at large appear.

And also all other piece or parcel of land situate in the ward of the said city of New York, and which was conveyed to the said Stephen Jumel by Mary Haight, John E. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, late of the city of New York, in the State of New York, saddler, deceased, by an indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned piece or parcel of land is described in said last-mentioned indenture as follows: "All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground, and running thence southerly twenty-three feet or thereabouts; thence westerly twenty feet; thence northerly fifteen feet or thereabouts; thence easterly six feet; thence northerly eight feet; thence easterly fourteen feet, to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie; southerly by ground now or late belonging to the said Stephen Jumel; westerly by ground belong-
520 ing to the heirs of the said testator; and northerly partly by ground belonging to the said heirs of the said testator, and partly by ground now or late belonging to the heirs of one Richard Kip, deceased, as by the annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear," together with all and singular the tenements, hereditaments, and appurtenances whatsoever, unto the said above mentioned and described premises in anywise appertaining or belonging, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity of the said party of the first part, of, in, or to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns forever, in trust, nevertheless, for the uses and purposes hereinafter mentioned, expressed, and declared, that is to say: In trust, that the said party of the second part, and his heirs, collect and receive
521 the rents, issues, and profits of the said above described and hereby conveyed premises, and every part and parcel thereof, and pay over the same unto Eliza Brown Jumel, (the wife of Stephen Jumel, late of the city of New York, now of Paris, in France,) or, at her election, suffer and permit her, the said Eliza Brown Jumel, to use, occupy, and possess the said premises, and to have, take, collect, receive, and enjoy the rents, issues, and profits thereof, to and for her own separate use and benefit, and to and for such other uses and purposes as the said Eliza Brown Jumel shall please and think fit at her own free will and pleasure, and not subject to the control or

interference of her present or any future husband, and the receipt and receipts of her, the said Eliza Brown Jumel, shall at all times be good and sufficient discharges for such payments, and for such rents and profits, to him, the said party of the second part, his heirs, executors, and administrators, and to the person and persons who are or shall be liable to pay the same. And upon this further trust, that the said party of the second part, or his heirs, lease, demise, let, convey, assure, and dispose of all and singular the said above-described premises, with their and every of their appurtenances, to such person or persons, for
522 such term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, interests, and purposes, and in such manner and form as she, the said Eliza Brown Jumel, notwithstanding her present or any future coverture, as if she were a feme sole, shall by any instrument in writing executed in the presence of any two credible witnesses, order, direct, limit, or appoint. And in case of an absolute sale of said premises or of any part thereof, to pay over the purchase-money to the said Eliza Brown Jumel, or invest the same as she shall order and direct. And upon this further trust, upon the decease of the said Eliza Brown Jumel, to convey the said above-described premises, or such parts thereof as shall not have been previously conveyed by the said party of the second part or his heirs, and with respect to which no direction or appointment shall be made by the said Eliza Brown Jumel, in her life-time, to the heirs of the said Eliza Brown Jumel, in fee-simple, and pay over to the heirs of the said Eliza Brown Jumel, such moneys as shall remain in the hands or under the control of the said party of the second part, or his heirs, arising from collections of the rents and prof-
523 its or the proceeds of the sales *of the sales* of the said above described premises, or any part thereof; provided, however, that the said party of the second part and his heirs shall be at liberty at all times to deduct and retain all reasonable and necessary costs, charges, and expenses attending the execution of the trusts hereby reposed.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

MARY JUMEL BOWNES. [L. S.]
M. WERCKMEISTER. [L. S.]

Sealed and delivered in the presence of—
W. C. WETMORE.

STATE OF NEW YORK,
City & County of New York, ss:

On the fifteenth day of January, A. D. 1828, before me personally appeared Mary Jumel Bownes and Michael Werckmeister, known to me to be the same persons described in and who have executed the within deed, and they severally executed the same as their act and deed.

W. C. WETMORE,
Comm'r, &c.

Recorded in the office of register in and for the city and county of New York, in liber No. 243 of conveyances, page 67, this 21st
524 Nov'r, 1828, at 10 min. past 3 o'clock p. m.
Exam'd by—

JAS. W. LENT,
Register.

(Endorsed:) Mary Jumel Bownes to Michael Werckmeister. Copy. Deed in trust. Dec'r 11, 1827. Rec'd recording-fees for J. W. Lent, pr. J. King, $4.12½.

525 ELIZA JUMEL TRANCHELLE, a witness called on behalf of plaintiff, being duly sworn, testifies:

By Mr. O'Conor:

Q. Where do you reside?
A. In Harlem, in the city of New York.
Q. The twelfth ward of the city of New York?
A. Yes, sir; I suppose it is.
Q. What is called Harlem?
A. Yes, sir; 129th street.
Q. Did you know Mary, who was the wife of Nelson Chase, in her lifetime?
A. Yes, sir.
Q. You knew her all her life?
A. I have always remembered her.
Q. Have you corresponded with her?
A. I have.
Q. And often seen her write?
A. Yes, sir.
Q. (Handing witness plaintiff's Exhibit No. 15.) Please look upon the paper which the court has marked "Exhibit No. 15;" look at the signature of Mary Jumel Bownes, at the end of that, and say whose handwriting that is, in your belief and opinion.
A. My opinion and belief is, that it is my sister's, Mary Chase.
Q. Who was the wife of Nelson Chase?
A. Yes, sir.
Q. Were you well acquainted with her handwriting?
526 A. I was. This, I most positively say, is my sister's handwriting.
Q. That signature (Mary Jumel Bowne) you most positively say is the signature of the late Mrs. Nelson Chase?
A. Yes, sir.
Q. (Handing witness plaintiff's Exhibit No. 16.) Now, please look upon the other paper, which is marked "Exhibit No. 16," at the signature of Mary Jumel Bowne to that paper, and say what your judgment, opinion, and belief as to that handwriting.
A. My belief is, that it is also the signature of my sister, Mrs. Chase.
Q. She was your sister, as you always understood?
A. Always understood and believed it.
A. And she became the wife of Nelson Chase?
A. She did.
Q. And in her early years, was known by what name?
A. She was generally called Mary Jumel, I think.

Cross-examined by Mr. Chatfield:

Q. Did you ever know her to be called Mary Jumel Bowne or Bownes?
A. No, sir; I never remember that.
Q. You never knew her by that name?
A. I knew that was her name, but I never heard her addressed by that name.
527 Q. You knew her name was Mary Jumel Bowne?
A. Yes, sir.
Q. Was that her name when you first knew her?

A. I always knew that was her first name.
Q. How old was she when you first knew her?
A. I knew her when I was a little girl.
Q. How old was she?
A. She was older than I was.
Q. When you first knew her, how old a girl was she?
A. I knew her when we lived at the farm-house. I knew her before we removed to the farm-house.
Q. You knew her down town?
A. Yes, sir.
Q. When she was quite a child?
A. Yes, sir.
Q. How old was she at that time, when you knew her down there?
A. She was a slight little girl.
Q. Between seven and eight years old?
A. I should think about that, or rather more. I was quite a small child, and she was older.
Q. You were not over two years old, were you?
A. I just remember seeing her once.
528 Q. She must have been seven or eight or nine?
A. Yes, sir; she was a small girl.
Q. Where was she living at that time?
A. She was at my father's house the time I saw her.
Q. Where?
A. In the city.
Q. And lived in the same family with you?
A. No, sir; I think she came from Madam Jumel's house on a visit.
Q. She was then living with Madam Jumel?
A. Yes, sir.
Q. And Madam Jumel, at that time, was living down town?
A. I don't remember that; but I suppose she was at that time.
Q. You were at her house once, at all events, when she was down town?
A. Yes, sir; at the corner of Whitehall street.
Q. Did you see Mary Jumel Bownes there at that time?
A. No, sir; I think she was at school in Newark at the time.
Q. And the first you saw of her was at your father's house?
A. Yes, sir—visiting.
529 Redirect:
Q. You said you knew her name was Bowne?
A. I always knew her name was Bowne, from her childhood up.

Mr. O'CONOR. I propose now to read from roll No. 22 of the minutes of the trial of the case on January 28th, 1872, at page 1451, the testimony of Mr. Cook.

Mr. CHATFIELD. I admit that the signature to the letters introduced from France, and heretofore marked "Plaintiff's Exhibit No. 1 and 2," is the genuine signature of Madam Jumel, or of Eliza Burr. It is also admitted that the signature to the power of attorney and bond, as contained in the testimony of Mr. Pery in the bill of exceptions, which will be read by and by, is the handwriting of Madam Jumel, and the genuine*ous* of those documents is admitted.

530 RICHARD C. COMBS, a witness called on behalf of plaintiff, being duly sworn, testifies:

By Mr. Carter:
Q. You reside in the city of New York?

A. I do.
Q. What part of it?
A. Carmansville.
Q. And your occupation is what?
A. President of the Exchange Fire Insurance Company.
Q. How long have you resided in Carmansville, or that neighborhood?
A. I first went to reside there in 1847.
Q. Were you a relative of the late Richard F. Carman?
A. Yes, sir; nephew.
Q. Have you always had more or less to do with his affairs?
A. Yes, sir; more or less ever since I recollect.
Q. Are you one of the executors of his estate?
A. I am.
Q. Was Mr. Carman one of the largest holders of real property in that vicinity?
A. Yes, sir.
Q. Have you been acquainted for some considerable time with the value of real estate in that vicinity?
A. Yes, sir; for the last twenty-five years.
531 Q. Do you recollect the estate called the Jumel estate?
A. Yes, sir.
Q. Do you know the different prices of property in New York?
A. I do.
Q. I want to call your attention to the value of that property in the year 1865. I will call your attention first to that property which lies east of the Kingsbridge road and Harlem River, between Kingsbridge road on the west and Harlem River, exclusive of the lot of ground upon which the homestead stands, and north of the Wear strip of property which Mr. Knapp owned. You know where that property is?
(Objected to. Taken subject to objection.)
A. Yes, sir; I know exactly where it is.
Q. In the year 1865, what, in your judgment, was the fair value of that property, on an average, per acre?
A. About $3,350 an acre, I think, on an average.
Q. In the same year what, in your judgment, was the fair market value of the grounds upon which the mansion stands—that plot of ground, thirty-odd acres?
A. Well, there may be about a thousand dollars difference. The house is very old.
Q. Worth a thousand dollars more an acre?
532 A. Yes, sir. That is nearer to the village.
Q. How was the property prior to 1865, and extending back to 1854? How was it in 1854, say—higher or low?
A. A great deal lower. My uncle purchased a small farm near Madam Jumel, about 27 acres, for about $400 an acre.
Q. I will take your judgment of what the value of the first lot of land to which I have called your attention was, lying east of Kingsbridge road and the Harlem River and north of that strip that goes through belonging to Mr. Knapp; what was the value of that in May, 1854?
A. I should think it would be about the same value as the piece that Mr. Carman purchased; it joined on to it just north of it.
Q. And of the homestead; take it in 1854?
A. The house then may have been in better repair than what it was afterwards.
Q. I mean take it just as it was in 1854, with the house on it, and presuming it to be in fair condition.

A. About $500 an acre.

Q. This property extends on one side from about Highbridge down to south of the mansion, does it not?

A. Yes, sir.

533 Q. What is the character of the property as it goes towards the Harlem River on that side?

A. Very rugged and rocky.

Q. How does it lie?

A. Very precipitous.

Q. And the value of that is what?

A. A great deal less than the other.

Q. But the estimates that you have given are average estimates of the whole?

A. Yes, sir; average estimates.

Q. Did you deal in property yourself? Have you been in the habit of dealing in property there?

A. Yes, sir.

Q. Did you buy any in 1865?

A. I think it was 1865, or the fall of 1864, I purchased an acre opposite Mr. Barry's house.

Q. That is lower down?

A. Yes, sir. That is about 150th street, and the mansion is about 160th street or 159th st.

Q. What did you give for that acre?

A. I think about $3,800 at auction.

Q. This mansion is about what street?

A. 160th street.

Cross-examined by Mr. Chatfield:

Q. Do you reside up there now?

A. Yes, sir.

Q. Do you remember when Mr. Kingsland bought his property?

534 A. I cannot say what year it was.

Q. Do you remember what year Mr. Martin bought his?

A. No, sir; I do not remember the year. I knew he purchased the forty-acre lot.

Q. Were those properties about the same value as the other properties you have spoken of, in 1864, irrespective of the improvements?

A. I think, about the same value, irrespective of the improvements.

Q. Kingsland and Martin had improved?

A. Yes, sir; very much.

Q. I am speaking of the property without the improvements?

A. Yes, sir.

Q. In 1854?

A. Not over $400 an acre.

Q. That mansion house is right in the village now?

A. It off to the east.

Q. Is it not right by the village?

A. I think it was in January, 1852, General Stebbins sold a plot of ground.

Q. The Jumel mansion is where?

A. Northeast of it.

Q. It is now built up to that point?

A. Now it is. At that time there were no houses there at all, in 1854.

Q. What is the value of that homestead now, without regard to the building?

535 A. $25,000 an acre.

Q. What is the value of that piece beyond the rear of it?

A. Some of it is worth that amount. I should think it averaged about $20,000 an acre.

Redirect:

Q. In 1865 property, at about that time and a little prior to that time, began to rise?

A. It rose very rapidly in 1867 and 1868.

Q. Generally, property on the west side of Kingsbridge road, how does the value of that compare with that on the east side?

A. I didn't see any difference at that time. In 1854 it was all selling at $400 an acre; then Mr. Stebbins sold his on the north side of 155th street, for $500, to Mr. Mills.

Q. In 1854?

A. In 1852 or 1853; just about that time.

(Mr. O'Conor handed to the court three written propositions on one sheet of paper, which were admitted to be correct by defendant's counsel, with the exception of an objection to the last one.)

536 SAMUEL RUSSEL CHILDS, a witness called on behalf of plaintiff, being duly sworn, testifies:

By Mr. Carter:

Q. You reside in the city of New York?

A. At the present time.

Q. And your profession is what?

A. Physician and surgeon.

Q. You were a resident of Saratoga at one time?

A. I have been in the habit or visiting Saratoga for the last thirty years. In bad health, I went there in 1851, and spent since that time some fifteen or sixteen summers there. My family has resided there for the last fifteen or sixteen years until the last two years.

Q. In the course of this sojourneying of yours in Saratoga, have you been engaged in real-estate operations there more or less?

A. I bought me a place there, and subsequently added to it several additions, in all some 300 or 400 acres, about a mile from Congress Springs on Union avenue.

By Mr. Chatfield:

Q. East or west?

A. Leading from Congress Springs to the lake.

537 Q. East or west?

A. East, of course.

By Mr. Carter:

Q. Were you familiar with the value of property in and about Saratoga Springs in the year 1865?

A. From 1851 to about 1868 I was, of course, familiar, buying and knowing what was passing there.

Q. Do you recollect three peice' of property supposed to belong to Madam Jumel, in the neighborhood of Saratoga Springs, lying east of Saratoga Springs?

A. I recollect three pieces of property situated on Lake avenue. One of those pieces adjoined the property I bought; another was nearer town; and the third piece I went once with a gentleman and friend of mine, Mr. Edward Stevens, to look at; a piece of some 50 or 55 acres, I believe, on Lake avenue, but extending back more, near a street called Nelson street I think—went with a view to buy the property.

Q. When did you make that visit with a view of purchasing the 50 or 55 acres?

A. I cannot say positively; it was some time not far from 1860. Mr. Stevens called at my house with his carriage, and I rode out with him to see it.

538 Q. Take the year 1865. What, in your judgment, was the value per acre of that piece of property in that year?

A. The piece you refer to on Union avenue and near Nelson street?

Q. The 55 acres that you went there with a view to purchase?

A. We went to see it as a fancy piece of property. There was a beautiful grove with land looking towards town, and then other land of not much value for cultivation. I think he told me that we could get it for about $200 an acre, some $10,000 or $11,000.

Q. In 1865 how much an acre do you think that property was worth?

A. I cannot say whether it was 1863 or 1865; it was subsequent to my purchasing there myself. It was casual my going with him; indeed had it been purchased by him I should probably have taken half of it, and had a pleasant cottage there in the town. I should think that some of the land, that particularly desirable as a place for gentlemen's residences, might have been worth from $200 to $300 an acre, perhaps some of it $300; the other portion of it was perfectly exhausted

539 and not of much value for cultivating, unless improved, which was worth less. I thought at the time we saw it that it was worth about $200 an acre on an average, taking the whole of it together. Some of it was not worth $50 an acre, and some of it was worth a great deal more.

Q. Do you think in 1865 the value was sensibly changed from that?

A. There was not much real-estate speculation there up to 1865; things had not changed a great deal.

Q. Do you think that would be a fair estimate of that property in 1865?

A. I should doubt whether the cash-value would have been more than that. I doubt whether it could have been sold for more than that. Still I am not positive. It it a matter of taste.

Mr. CHATFIELD. This evidence about value I object to.

The COURT. It is all taken subject to objection.

Q. There was another lot, a piece of twenty-five acres, going from Nelson street to the red barn. Do you recollect that?

A. Yes, sir; I recollect that. I recollect passing it some three years ago and seeing a liberal crop of potatoes on it.

540 Q. What, in your judgment, was the fair value of that property in 1865?

A. That was worth more, because it was embraced more within the corporation limits; a square of blocks was laid out there. After what I have heard said, &c., I should suppose at that time it ought to have been worth in the neighborhood of $400 an acre. It is a mere judgment compared with other sales made and my own purchases. I compared the purchase with my own.

Q. Now, there was a larger tract between Lake avenue and the Stout farm of 126 acres about. Do you recollect that?

A. Perfectly; I have driven over the ground several times.

Q. Is that the piece that adjoined your property?

A. Yes, sir; I bought a farm called the Stump farm of 100 acres, with farm houses and buildings on it. Its rear backed up on this, and frequently having business on Lake avenue, I have driven out through my Stump farm through this land; then to Lake avenue to town, and

returning that way. I bought this Stump farm, which I should
541 think much more valuable land than that, because it is all improved and on Lake avenue, leading to the lake, which is a fashionable drive, and is a very nice piece of property; I bought that, it must be some time about 1856, I think. I paid for that 100 acres, I think, $9,000.

Q. With improvements?

A. Yes, sir; a very beautiful meadow of about 40 acres.

Q. What, in your judgment, in the year 1860, was this 162 acres of Madam Jumel's property worth per acre on an average?

A. You must allow me to go back. In 1852, I bought seventy acres between the Stump farm and town, a very beautiful *sight*, as Mr. O'Conor knows, having fish-ponds on it, but the buildings were not of very great value. That is not exactly on a corresponding range, and there is a little road intervening between the avenue and the lake and the Jumel property. I bought 100 acres in 1852, there, when I was spending the summer there for my health, at $100 an acre. I paid $100 an acre for that in 1852. In 1823 I bought 55 more acres, for which I paid
$50 an acre. The whole property I had then cost me, all told,
542 taking the first purchase at $100 an acre, and the other at $80, and the other at $50, probably in the neighborhood of $80 an acre, and in that I had over half a mile front on the avenue leading to the lake.

Q. In 1865 what, in your judgment, would have been the fair value, or was the fair value, of this Madam Jumel's property of 162 acres?

A. It could not have been worth more than mine.

Q. What was yours worth at that time?

A. I paid $80; I told you it was worth $100 an acre.

Q. Your purchase was earlier?

A. Yes, sir; but the property was two years ago worth $100 an acre; $100 an acre would be a fair valuation for it, and I speak of that because there was some fine timber on it, and I tried to buy it.

Q. In your judgment, in 1865 was $100 an acre a liberal valuation for the Jumel property of 162 acres?

A. I should think it was a very full valuation.

Q. At all times previous to 1865, would these valuations, if changed at all, be more or less?

543 A. Things have been steadily advancing in Saratoga, up to a given point, but within the last four or five years values have gone up.

Q. Prior to 1865, would the value have been higher or lower?

A. I think there was a steady increase of value.

Q. Beginning from what time?

A. From 1852, when I bought, perhaps up to 1865, 5 or 10 per cent. probably.

Q. Do you recollect Madam Jumel?

A. I never was acquainted with her; I knew her by sight.

Q. Do you know her property on Circular street, in the town?

A. Yes, sir; for I tried to buy it once. My colored servant, after I left, hired the house and took charge of it.

Q. In 1865 what was the fair market-value of the improved property on Circular street of Madam Jumel?

A. There is only one house of which I have any recollection, and I cannot state whether it was fifty feet front or what; but I know I offered $2,500 for it.

Q. In 1865 what would you think to have been its fair value?

A. I think $4,000 or $4,500 would have been the then price.

544 Q. Had it been any more valuable than that at any previous time?

A. Oh, no; not at all; except the building had deteoriated a trifle. Property has gone up there.

Cross-examined by Mr. Chatfield:

Q. Do you know whether those buildings were new or old on Circular street?

A. They were far from being new. Some of them were in comfortable condition, and others rather dilapidated.

Q. Do you know when they were built?

A. I do not. They were built before my recollection.

Q. Before your knowledge of Saratoga?

A. My knowledge of Saratoga goes back to the time I was twelve years of age, but I didn't go into the details of property.

Q. When did you know of this property on Circular street?

A. I only know the colored parties, a Mr. Freeman and his wife, that worked for me a good deal, occupied and took charge of that property probably in 1865 or 1867.

Q. Did they take charge of that property before Madam Jumel died?

A. I think they used to have the keeping of it in winter, when she was absent. I am not certain.

Q. Do you know whether they took charge of it after her death?

545 A. I cannot tell you positively with regard to that. I think they resided in the rear part of the house since her death.

Q. Did you ever examine the house except from the outside?

A. I never went into it to examine it. I called there for them when I wanted them to go. The buildings were not of much value.

Q. How much land was there?

A. I cannot say whether it was more than 50 or 100 feet front.

Q. It would make some difference whether it was 50 or 100, would it not?

A. Of course. It might have been fifty, and might have been seventy-five; but my impression is fifty feet front by about 150 feet deep.

Q. Was there any perceptible difference in the value of Saratoga property between 1862 and 1865?

A. Which property do you refer to?

Q. Any property in Saratoga.

A. I stated that property was steadily advancing.

Q. How much per cent. a year?

A. Perhaps five per cent. I don't know whether it would be as much as that.

Q. Don't you know that from late in the fall of 1864 up to 1865 property very nearly doubled in value?

546 A. Not in Saratoga. There never has been any speculation in Saratoga property until the last two years.

Q. Didn't Saratoga feel the same impulse as property elsewhere?

A. No, sir; there has been no speculative feeling there until the last year or two.

Q. Was it about as high, or quite as high, late in the fall of 1865 as it has been at any time before or since?

A. I should say that property to-day was held higher, by 10 or 15 per cent., than it was at any time up to the war.

Q. What should you say that house on Circular street is worth now?

A. I have not seen it in two or three years. I don't know how much

it has dilapidated. I should not think the buildings worth much. I should value it at about what the lot is worth. The buildings may be worth something; I don't know how much—$1,000 or $1,500.

Q. Is there any peculiar reason why the buildings should go to decay any more rapidly than any other building?

A. The best reason in the world, that nothing has been expended to keep them in repair.

Q. That you don't know?

547 A. I know there was not prior to my living there. I would not be able to say positively with regard to the value of it; it may be worth $8,000.

Q. Is a good deal of the land so located as to be valuable for village lots?

A. The twenty-five acres is now within the village limits, and will one day be wanted for villages purposes.

Q. It is suitable for that purpose?

A. Yes, sir, perfectly so; and this place I went to see with my friend Stevens.

Q. The fifty-five-acre lot?

A. Yes, sir; that was desirable as a place where a gentleman wanted a few acres to erect a cottage.

Q. Can you speak of its value now?

A. I don't know what its value is now.

Q. Do you know anything about the present value of the 162 acres?

A. I do not. I presume it has not much enhanced, it is so located.

Q. Had you any knowledge of its value, then, except what you derived from Mr. Stevens that went with you?

A. The fifty-five acres?

Q. Yes, sir.

A. I went with him and we looked at the property, and if we could get it at such a price, we thought we would take it.

548 Q. Did you form any opinion of its value irrespective of what he said?

A. I formed the opinion that it was worth about $200 an acre.

Q. Is that 162 acres nearer the lake than the race-course on the other side of it?

A. The other side of the race-course, about one-third of a mile east of the race-course.

Q. Towards the village?

A. Towards the lake.

Q. Is it beyond the race-course, east, towards the lake?

A. Yes, sir; this side of the race-course is worth four times that.

Q. The fifty-five acres is east of that?

A. Yes, sir. I am not able to state the distance, but I suppose about a mile from Congress Spring.

Q. Is not the race-course on Lake avenue, too?

A. No, sir. On Union avenue, leading from Congress Springs to the lake.

Q. Is that not the usual course to the lake?

A. There is such a thing as fashion in this world. Union avenue is the fashionable drive. It has been widened to 100 feet and improved by setting out shade-trees.

Q. And the fifty-five acres are nearer the village than the race-course?

549 A. No, sir; it was not as near Congress Springs from the race-course by one-third of a mile.

Q. It was northeast of the race-course?
A. Yes, sir.
Q. And how far from that?
A. In a direct line from the race-course on Union avenue, Lake avenue would be something more than half a mile, maybe three-fourths; I cannot say.

550 The three following propositions were admitted to be correct:

1. The deeds which have been put in evidence from the bill of exceptions are all the deeds which were put in evidence on either side on the 2nd trial at law.

2. The plaintiff on that trial gave in evidence no original deeds, but only certified copies from the register's office.

3. The statements of the bill as to the commencement, prosecution, and termination of the suits at law prosecuted for the plaintiff by Edmunds & Fields from the word "first," on first line of printed folio 134, to the word "same," on fourth line of printed folio 144, are correct.

Admitted, subj. to obj'n.

551 NELSON CHASE sworn.

Direct examination by Mr. O'Conor:

Q. Are you one of the plaintiffs?
A. Yes, sir.
Q. Were you familiar with these lands in Saratoga that Madame Jumel owned?
A. I am.
Q. All of them?
A. Yes, sir.
Q. Quite familiar with them?
A. Perfectly so.
Q. You knew of their purchase at the time?
A. I was present at the purchase.
Q. And the deeds you have often seen?
A. Yes, sir.
Q. What I want to ascertain from you is whether, in speaking of them here, Dr. Childs correctly referred to the land?
A. He did.
Q. Whether the lands he speaks of are the same described in those deeds?
A. They are.
Q. The whole of them?
A. Yes, sir.
Q. She didn't hold any other lands except those?
A. None other.

By Mr. Carter:

Q. There were no improvements on those lands except the Circular street property?

552 A. None except some buildings of no value, to the extent of $1,000. On the fifty-five acres there is no tenements whatever. On the twenty-five acres there is a little bit of a shanty. On the 162 acres there was formerly a farm-house and a barn, both of which would not be worth $1,000 to-day.

By Mr. O'Conor:

Q. Or at any time within your recollection?

A. Probably when she first purchased the farm-house and barn they might have been worth $1,500—when she purchased the Taylor farm.

Q. Were you present at the making of the inventory of Madam Jumel's estate?

A. Yes, sir; I was.

Q. And pointed out the property to have it appraised?

A. I pointed it out to the appraisers.

Q. What did you consider the whole of it worth?

A. Not to exceed the amount stated in the inventory.

Q. Had Madam Jumel any personal property that you know of?

A. None that I am aware of.

Q. She was a very old lady. Had she any debts or liabilities except what may appear out of these transactions that we have been proving here?

553 A. Nothing that amounted to anything; all had been paid.

Q. Her grocers?

A. Yes, sir, everything of that kind; if there have been any little bills they have been paid.

Q. And nothing remains to be settled?

A. Nothing whatever.

Q. The family that remained in possession of the property have taken whatever there was there of the personal property?

A. Yes, sir.

Q. It has gone to the use of the family?

A. Yes, sir.

Q. It has not been turned into money?

A. Except a mortgage stated there.

Q. You received the money?

A. Yes, sir.

Q. At the time Madam Jumel went to France, in the year 1853, taking the children with her, and prior to the marriage of your daughter, have you any means by which you can inform the court what Madame Jumel then appreciated or considered, or supposed to be the value of the whole property that she had, including the Jumel property, making no distinction?

(Objected to on the ground that the question implies declara-
554 tions on the part of Madam Jumel which are not admissible in evidence.)

Mr. O'CONOR. This is only offered with the idea of giving Mrs. Jumel's appreciation or supposition as to the value of this property. I don't see how we are to show, as against Madam Jumel's heirs at law, or executors, or anybody, that she willfully and knowingly misrepresented a fact, which misrepresentation is in evidence, without showing her talk and conversation. It would not be evidence against her; it would be evidence against them.

The COURT. The statement in the letter, I have not read it, but I presume there is a statement in the letter as to the value, and that can be compared with the value as proved, and the valuation can thus be made apparent. The presumption is natural that she knew the real value, and that, therefore, if she exaggerated, she exaggerated knowingly. The difficulty about it is this: If she made a statement at a different time to Mr. Chase from what I find in her letters, which am I to believe was her true opinion? Why believe one rather than the other?

Mr. O'CONOR. That which coincides with the fact.

555 The COURT. No; this woman may have been under an hallucination one way or the other. It seems to me the inference must be

that she knew what it was; and, therefore, that the exaggeration was a knowing exaggeration.

Mr. O'CONOR. If that conclusion should be reached, and I don't see why it is not a correct conclusion, this evidence would be unnecessary. Perhaps I ought to ask him—if you think this evidence of the way she talked ought not to be received, then I will ask him a question or so about her living on the property.

The COURT. Yes; I hardly think it competent.

Mr. O'CONOR. We offer it, and you honor rules it out, and we won't except to your honor's ruling; but let us have the credit of it, if there is anything in it.

The COURT. I will take it as an offer to show by declarations that just prior to her going to France, in 1853, she did not consider her real estate of greater value than at the utmost $500,000 or $600,000, including the Jumel property and all.

Q. We have gone into this case, and given evidence about the real estate of Stephen Jumel and Madam Jumel. Is there any other
556 real property belonging to either than what has been spoken of here?

A. No other, that I am aware of.

Q. And there was not in 1865?

A. No, sir.

Q. In 1853, when she went to France, had Madam Jumel any greater amount of personal property than she had at her death?

A. No, sir; not so much.

Q. Was Madam Jumel, in 1854, quite conversant with all this property of hers, down-town property and the rural property and the Saratoga property; was she in the habit of seeing them and knowing them?

A. She was perfectly familiar with every part of it.

Cross-examined by Mr. Chatfield:

Q. You were living in the house with Madam Jumel when she died?

A. I was.

Q. And had been for how long prior to that time?

A. With some slight intervals, I had been living in her family from the year 1832 until her death.

Q. I mean the last time you went there prior to her death; how long had you been there when she died, from that time?

A. I should say nearly twenty years.

Q. Your wife died, when?

557 A. She died in 1843.

Q. You were not living with her at that time?

A. No, sir.

Q. How soon after her death did you go there to remain permanently?

A. I think within four or five years, perhaps.

Q. And from that time on you were there practically the whole time?

A. Practically the whole time.

Q. Had you a general and intimate knowledge of her personal estate?

A. I think I had a very intimate knowledge of it.

Q. Did you take immediate possession of her personal effects immediately after her death?

A. Yes, sir.

Q. Had you that possession from that time up to the time of appraisement by the appraisers?

A. I had.

Q. Did you produce the property to the appraisers for appraisal?
A. Yes, sir.
Q. How soon after her death were letters of administration issued?
A. It was more than a year after her death before letters of administration were granted.
Q. Were letters issued prior to that time for the will annexed?
558 A. No, sir.
Q. Were letters ever issued for the executors named in the will?
A. Never.
Q. Who were the administrators appointed by the surrogate?
A. William C. Wetmore and William B. Jones, a nephew of Madame Jumel.
Q. And that, you think, was a year or more after her death?
A. I think so; it may be longer.
Q. Have you that inventory before you now?
A. Yes, sir; it is here.
Q. Have you looked at it to see whether any jewelry is inventoried?
A. I have not, but I will. (Witness refers to inventory.) No, sir; there is not.
Q. Is there not silver-plate or plated ware inventoried?
A. Yes, sir, there is.
Q. To what extent?
A. I will read to you: One silver tureen and spoon, silver-plated; six dishes, which are better known as platter-shape silver-plated dishes; four two-square side-dishes, silver-plated; two cake-baskets, silver-plated; one castor, incomplete; one egg-castor and gilt-spoon;
559 one toast-rack; four stands of plate; one fruit-stand; one tray; one water-pitcher, silver-plated; one tea-pot and one coffee-pot; one slop-bowl; one sugar-basin and one cream-pot; one water-urn; two sugar-bowls. Then there is gilt-ware, gilt with gold; one coffee-pot, two cups and saucers, two trays, consisting of seven slabs; one large china-vase, gilt and painted with gilt; one stand. That seems to be all the plated ware.
Q. Are the values carried out?
A. They are.
Q. Yes, sir; very easily. I will give you the items. The first item, under the head of silver-plated ware, is——
(The court intimated to counsel that it would be a waste of time to have the witness state the value of the different articles enumerated by him.
Mr. O'CONOR stated that he would permit defendant's counsel to add whatever additional value he (defendant's counsel) thought proper to the inventory, and also to include the diamonds at the price fixed upon them by the lapidary at the last trial, $55,000.)
Q. There were such diamonds?
A. Yes, sir.
Q. And they are not in the inventory?
560 A. They are not.
Mr. O'CONOR. I will admit that Madame Jumel had, at her death, diamonds, which, for the purposes of this case, are to be considered as belonging to her, and that they were worth $55,000, and that she had them at all the times about which we have been talking.
Q. Were all the diamonds she had mentioned at that time to the lapidary?
A. Yes, sir.

Q. That you know?
A. Yes, sir.
Q. Was there any solid plate there?
A. I think not a stiver; not a particle.
Q. You think it was all plated ware?
Q. Yes, sir; there were too many burglars around that neighborhood to keep much that they would take away.
Q. From 1854 up to the time of her death, who had the rents and profits of the Liberty-street property?
A. She.
Q. From the time of her death up to now, who had them?
A. I have.
Q. What is the annual rent of that property?
A. It varies in different years. I will give you what it was at the time of her death. It was $9,000 at the time of her death,
561 and so continued up to May 1st, 1869, under a lease.

By Mr. O'Connor:

Q. Under a lease executed by her in her life-time?
A. Yes, sir.
Q. Running that time?
A. Yes, sir; running to May 1st, 1869.
Q. How long a lease?
A. A lease of five years. After that lease expired, I undertook the letting of it, and it let at between $11,000 and $12,000 a year.

By Mr. Chatfield:

Q. From year to year you mean?
A. From year to year until I improved the property and expended about $30,000 upon it, since which time it has rented at from $27,000 to $30,000 a year; some years more and some years less.
Q. In what year did you make those repairs?
A. In the year 1870.
Q. Who has had the possession of the homestead and of the land up there?
A. I, in conjunction with my children, Mrs. Pery and Mr. William Inglis Chase.
Q. You and your family have occupied it?
A. Yes, sir.
Q. And still occupy it?
562 A. We do.
Q. Has any part of it been rented?
A. No, sir.
Q. Has it been used for farming purposes, any of it?
A. No, sir; but for pasturage, and some portions about the house has grass on it.
Q. Mowing?
A. Mowing.
Q. Have you got fire-wood from the premises?
A. No, sir; that has been substantially cut off long before her death.
Q. How much money have you received from the city and Croton board on account of that property?
A. $40,000 for a piece of land for a reservoir at High bridge.
Q. From the Croton board?
A. No, sir; I didn't receive it from the Croton board. I received it from the city. Also $125,000 for a piece of land near High bridge, for what they call High-bridge Park; making $165,000.
Q. What was the award for that?

A. I cannot remember without going into figures.
Q. Can you not remember near it?
A. No, sir.
Q. Was it near $250,000?
563 A. It may have been, but I won't fix the amount without seeing the figures.
Q. You saw the figures, didn't you?
A. I suppose I did.
Q. How much do you think?
A. Rising $200,000, I think.
Q. Was it not rising $250,000?
A. It may have been, but that included the assessments back, which were taken out; $52,500.00 for asssessments on the other property, as an advantage to the other property, as it was called, which I paid.
Q. It would leave something over $240,000, would it not, after taking out those assessments?
A. That I cannot tell without having the figures before me.
Q. Is that not your recollection, that that is about it?
A. Yes, sir.
Q. You got the $125,000 in addition to the $40,000?
A. Yes, sir.
Q. Then take the assessments at $250,000 an' take out your $52,500 for the assessments, it would leave about $200,000 on that, and $40,000 on the water arrangement, which would make it $240,000, provided you had taken the whole of it. I want to know whether, after deducting
564 the award you had for both the park and the reservoir, it would not leave about $24,000 that would be coming to you, although you didn't get it.
Mr. O'CONOR. I think, taking both, it would make about that.
Q. Did you dispose of that part of that award which you did not receive yourself?
A. I did.
Q. To whom?
A. To John M. Davidson.

By Mr. O'Conor:

Q. You sold the award for $125,000?
A. I did.

By Mr. Chatfield:

Q. Who has had possession of the Saratoga property?
A. I have.
Q. And still have it?
A. Yes, sir.
Q. Do you rent any part of it?
A. It is farmed out. I have not received a thousand dollars, including the rent of the Circular-street property, from the whole of it.
Q. By farming out, do you mean let on shares?
A. Yes, sir; and I got substantially nothing; and I never expect to.
565 Redirect:

Q. You have stated about how much you were able to get out of this property latterly since you improved it?
A. Yes, sir.
Q. In what way do you let it out?
A. I let it out in offices to a very great number of persons.
Q. Requiring attention to make a business of it?

A. Yes, sir; requiring a number of people to give attention to it.

Q. (Handing witness a letter dated August 19th, 1815, from Stephen Jumel to Madam Jumel.) When and where did you first see that letter which I now hand you?

A. This letter was found among the papers in the mansion house after Madam Jumel's death.

Q. Had you ever seen it before, to your knowledge?

A. No, sir; I never had. It is in Mr. Jumel's handwriting.

Q. You know his handwriting?

A. I did.

(Mr. O'Conor offered in evidence the translation of a letter from
566 Stephen Jumel to Mary Jumel, dated August 19th, 1815. Objected to. Admitted subject to objection.)

By Mr. Chatfield:

Q. Is the address on that letter in the same handwriting as the body of it?

A. No, sir, I think not.

By Mr. O'Conor:

Q. You don't know his handwriting?

A. No, sir, I do not. As to the address, I don't know that; but the signature is in Mr. Jumel's handwriting, and the body of the letter.

(Defendant's counsel admits the translation offered in evidence by Mr. O'Conor to be correct, subject to his former objection. Letter and translation marked by the court "Plaintiff's exhibit No. 17, April 28th, 1874, S. B.")

567 BAGNÈRES, le 19 *Août* 1815.

MA CHÊRE MARY: C'est avec un sensible plaisir que nous avon*t* reçu ta chère lettre, & Monsieur Péry fils, qui est ici avec nous, & il doit repartir demain, c'est par lui que nous avon*nt* appris que vous ne manquiz pas d'occupations; cela est très-bien, car c'est dans ce moment que cela doit être, comme votre temps est très-précieux. Je reçu' un' lettre de Mr. le curé Fenwick, de New York. Elle demande si vous êtes toujours charmante, & si vous croyez à être bonne; je lui & repondez que vous êties dans un couvent et qu'il n'y avait de doutte que vous fessiez votre devoir.

Veuillez me croire votre cher père & suis avec estime,

STEPHEN JUMEL.

568 *No.* 17, *April* 28, 1874.—*S. B.*

BAGNERES, 19 *August*, 1815.

MY DEAR MARY: It was with great pleasure that we received your dear letter; and Mr. Pery, junior, who is here with us and is to leave again to-morrow, it was through him that we learnt you were not without employment. This is very well, for it is at present that it should be so, as your time is very precious. I received a letter from the priest, Mr. Fenwick, of New York. He asks if you continue to be good. I have answered him that you were in a convent, and that there was no doubt you were doing your duty.

Pray believe me your dear father, and

I am, with esteem,

STEPHEN JUMEL.

Addressed to

Miss MARY JUMEL,

New York.

BORDEAUX.

569 STATE OF NEW YORK, *ss:*

Paul F. Fuller, being duly sworn, deposes and says that he is a clerk in the office of Messrs. Condert Brothers, at No. 49 Wall street, in the city of New York; that he is familiar with the French and English languages, and accustomed to translate the same; that the foregoing is a full, faithful, and correct translation of an original letter in the French language, hereunto annexed, dated at Bagnieres, 19th August, 1815, and of the address on the same.

PAUL F. FULLER.

Sworn to this 5th day of November, 1866, before me.

EDWIN F. COREY, JR.,
Notary Public, City and County of New York.

(Endorsed:) U. S. circuit court. Nelson Chase et al. vs. George W. Bowen. Complainant's exhibit No. 17. Stephen Jumel's Bagneres letter.

570 The complainant's counsel then read in evidence from said bil of exceptions so much as follows of the testimony of Paul R. G Pery, who was examined as a witness in said ejectment suit.

571 The defendant then called as a witness on his behalf PAUL R. G. PERY, who testified before the said jury, among other things:

I reside now at the Jumel mansion. Am son-in-law of the defendant, Nelson Chase. On July 15, 1854, married his daughter, Eliza Jumel Chase. I am a Frenchman by birth; born in Bordeaux, France. I knew Madame Jumel; first met her in 1853, at my father's in Bordeaux. His name is John Edouard Pery. He is yet living, and resides there. Miss Chase and her brother William were with Madame Jumel at the time.

(The plaintiff objects to the witness stating anything which occurred between himself and Madame Jumel, or his father and madame, irrelevant, immaterial, incompetent, and hearsay.

The presiding judge decided to overrule the objection and admit the testimony.

To which decision and ruling the plaintiff then and there duly excepted.)

Witness continued: My wife is living and here in court. We have one daughter, sixteen or seventeen years of age. She was born in France. Mrs. Jumel, when in France in 1854, went under the

572 name of Eliza Burr. She introduced me to the children as her grand neice and grand nephew. Madame Jumel sailed for America a few days before the marriage. My wife and I left France July 26th, 1854. We arrived in New York early in August of that year. We stayed at the mansion with Madame Jumel and the family until November of that year, when we went to Europe. We lived with my father in Bordeaux until we returned to New York, in May, 1856, when we returned to the mansion and lived there with Madame Jumel until December, 1857, when Madame Jumel hired a house in 41st street, where we went to live. She bought that house soon after. My wife's health was poor when we went to this 41st street house. When at the Jumel mansion, in 1854, I saw there hanging up a very large framed family painting. It was a group. Madame Jumel was seated and was the central figure. My wife was on one side of her, my brother-in-law, William I. Chase, was on the other. It has remained in the same place ever since. It is there now.

Two letters in French were produced, respectively dated May 22, and May 26, 1854. English translations thereof were as follows:

573 PARIS, *May* 22, 1854.

SIR: I am in no wise offended by the questions you address me in your letter of the 20th instant, and I answer them with the greater pleasure, because their object is the happiness of my niece, upon whom rests all my affection, as the greater part of my fortune is destined to her as also to her brother.

That fortune may be estimated at two millions of dollars, which represent about ten millions of francs.

In case my niece should marry your son, I would assure to her an income of five thousand francs; I cannot exceed that because it does not enter into my present views to touch my capital, of which a large portion is to be divided between my niece and her brother, my nephew; but being once married, if my niece, as I hope, be happy in her household and be with regard to me what she has always been, my intention is to advance her beyond the share which is coming to her and which I destine to her from this day.

Such are, sir, my intentions with regard to my fortune. With that, independently of what you would do for them, the young people will be comfortable.

574 If these projects should be realized, I have no doubt, sir, but that my niece would receive among you a welcome and an attachment equal to that which her family has for her, and I also believe that her constant occupation and her principal object would be to deserve them by her attentions, while her presence would increase the joys of the new family which thereafter would be hers.

If the position which I offer for my niece is agreeable to you, I do not doubt, sir, but that the conclusions be favorable to the wishes of your son.

I shall rely upon the details which you will give me of your situation, in case you wish that the affair should take place.

Pray receive, sir, the homage of my perfect consideration.

(Signed) ELIZA BURR.

575 PARIS, *May* 26, 1854.

SIR: Your letter of this morning informs me fully of your intentions with regard to the dowry which you desire for the wife which your son shall have chosen. I understand all your solicitude as a father; but as I guarantee the income of five thousand francs by all the contracts which you will require, and that, moreover, that sum would be invested (that of 100.000f.) either in securities of the French government, or in loans on mortgage, or finally by the purchase of real estate, put me in the place of the state, of the mortgages, or the purchases of real estate, as I guarantee the income, and the obstacle will be overcome.

Moreover, it does not enter into American customs to give a dowry to young ladies when they marry.

All my fortune, as I had the honor of informing you in my letter of the 22d instant, is in real estate; it consists of property which I am not disposed to sell, and it enters by no means into my intentions to incumber it.

Moreover, my niece having lost her mother in her infancy, it is
576 I who brought her up; she never left me, and I have for her a veritable affection.

Without settling to-day the share which she may have in my estate, that share may be considerable, and by my testamentary dispositions that share will be assured to her.

Accept, sir, my very sincere salutations.

(Signed) ELIZA BURR.

If these arrangements enter into your views, we can give them, sir, a solution which will be favorable to the young people. I add that I await your reply by return mail in order that I may make arrangements with my niece's father, who resides at New York. The packet which is to take the letters leaves Liverpool on Wednesday next. Be good enough, sir, to communicate my good wishes to Madame Pery, and to assure her of my perfect consideration.

(Signed) ELIZA BURR.

577 The witness further testified as follows:

These two letters were received by my father at Bordeaux prior to my marriage. They came by mail. I have seen Madame Jumel write and know her handwriting. These two letters are signed by her.

A power of attorney and a bond, each purporting to be executed by Eliza Burr, were produced and were as follows:

578 Know all men by these presents that I, Eliza Burr, of the city and State of New York, United States, now in Bordeaux, by virtue of the power vested in me in a certain power of attorney, executed by Nelson Chase, of the city of New York, bearing date June 13th, 1854, do hereby appoint Levi K. Bowen, consul of the United States at Bordeaux, my lawful attorney, for me and in my name to give in marriage to William Paul Raymond Pery, of Bordeaux, France, my niece, the daughter of said Nelson Chase, Eliza Jumel Chase, as authorized by the said power of attorney from Nelson Chase dated as above.

In testimony whereof I hereunto set my hand and seal on this fifth day of July, 1854.

ELIZA BURR. [SEAL.]

Witness present:

ALEXIS T. BONNET.

Before me, L. K. Bowen, United States consul at Bordeaux, this day personally appeared the within-named Eliza Burr, who duly acknowledged the foregoing power of attorney to be her act and deed.

In witness whereof I hereunto set my hand and affix the seal
579 of my office on this fifth day of July, 1854.

[L. S.] L. K. BOWEN, *U. S. C.*

580 Whereas my grand-niece, Eliza Jumel Chase, of New York, the daughter of Nelson Chase and Mary Jumel Bauns, is about to become married to William Paul Raymond, son of Jean Edward and Catherine Elizabeth Larue Pery, of Bordeaux, France: Out of consideration and affection for my said niece, I do hereby agree and promise by this my act and deed to give to my said niece, on or before the day of said marriage, in cash, the sum of five thousand francs, (5,000 frs.,) and should said marriage be duly consum'ated, I promise thereafter, for the consideration set forth, to pay on the 10th day July, 1855, and annually thereafter during my natural life, a pension of the sum of five thousand (5,000) frs. to my said niece Eliza Jumel Chase, or her order, payable in France.

In testimony whereof I, Eliza Burr, of the State of New York, United

States, now in the city of Bordeaux, France, do hereby set my hand and seal on this fifth day of July, in the year of our Lord one thousand eight hundred and fifty-four.

(Signed) ELIZA BURR. [SEAL.]

Witness present:
ALEXIS T. BONNET.

581 Before me, L. K. Bowen, United States consul at Bordeaux, this day personally appeared the within-named Eliza Burr, who duly acknowledged the foregoing bond or obligation to be her act and deed. In witness whereof I have hereunto set my hand and official seal this fifth day of July, A. D. 1854.

[L. S.] L. K. BOWEN, *U. S. C.*

The witness further testified: I have seen Consul Bowen and Alexis T. Bonnet, the subscribing witness to these papers, write, and know their handwriting. They are both dead. The signatures to these two papers are all the handwriting of the persons named. The said two letters, the said power of attorney, and the said bond were read to the jury. On his cross-examination this witness stated that he had sworn on the first trial of this case that Madame Jumel had called his wife and brother-in-law her grand-children, and had told him that their mother was her adopted daughter, and had sometimes spoken of his wife as her niece, and sometimes grand-niece, just as it happened.

582 The complainants' counsel then read in evidence from the said bill of exceptions parts of the testimony of Eliza J. Franchell, a witness called for the defendant on the trial of the said ejectment suit. The parts so read were as follows:

583 The defendant then called as a witness on his behalf ELIZA J. FRANCHELL, who testified before the said jury, among other things, as follows:

That she knew Eliza B. Jumel. That the witness was born January 28, 1808, which makes me 65 years of age to-day, and the daughter of William and Maria Jones. That her mother died in 1850, and her father ten years previous. That she knew Madame Jumel as early as she had any recollection of anything. That witness's sister, who was afterwards Mrs. Chase, was older than the witness. Witness remembers Mrs. Chase when she, witness, was very small. Knew her well when they lived at the farm-house. Believed she was christened Mary Ann, but she was always called Mary. She always lived, from witness's earliest recollection of her, with Mme. Jumel and Mr. Jumel. Witness was always intimate with Mrs. Chase until she died. She was witness's sister. She, Mrs. Chase, has been called Mary Jumel, they having adopted her. Have no recollection of any one having called her Mary Jones. Never heard that name until here in court. Mrs. Chase had two children, Eliza, now Mrs. Paul Pery, and William Inglis Chase. Wit-
584 ness lived at the mansion-house with Madame Jumel for a year or two, when about thirteen years of age.

The witness further testified as follows:

I was with Mary when she died. Judging from her appearance, and on my own observation, she was seven or eight years older than myself. I have always been told and understood that she was born in 1801. When Madame Jumel travelled about the country she took Mary with

her. In 1815 Mr. and Madame Jumel and Mary went to France together. Mary did not return for three or four years. I think her return was in June or July next before she attained her eighteenth year. Madame Jumel took Mary with her to France again in 1821. That time they both remained away three or four years, and came back together.

Madame Jumel also made a visit to Europe in 1851.

585 When I was a very small child my father and we lived at the corner of Pearl and Whitehall street'. Mr. and Madame Jumel lived on Whitehall street. I think on the corner or next to the corner of Pearl and Whitehall streets. I remember going there and turning the handle of an organ or musical instrument, that if a crank was simply turned played tunes. We went to school in Connecticut in 1817, and before that Madame Jumel had come back from France and was living alone at the mansion.

On call of the plaintiff's counsel witness produced her father's family Bible, with the family record of his marriage and of birth of children, which the witness stated to be in her father's handwriting.

The plaintiff read the same to the jury. It was as follows:

Family record.

MARRIAGES.	BIRTHS.
William Jones.	William Jones, 17 June, 1775.
Maria Bowne, December 19th, 1804.	Maria Jones, 19 December, 1775.
New York, by Rev'd Bishop Moore.	Mary Ann Walter Bowne, Sunda', 8 September, 1801.
586	William Ballou Jones, 15 April, Tuesday, 1806.
	Eliza Jumel Jones, Thursday, 28 January, 1808.
	Louisa Jumel Jones, Thursday, 21st December, 1809.
	Stephen Jumel Jones, 19th March, on Thursday, ¼ before 7 o'cl' a. m., 1812.
	Stephen Decatur Jones, 31 December, 1813.

From 1815, Mr. Jumel remained abroad until three or four years before his death. I saw him after his return; he then lived at the mansion. That was his home until he died. It was also Madame Jumel's permanent home until she died, though she sometimes lived for a time in other places.

587 The complainant's counsel then read in evidence from said bill of exceptions part of the testimony of Nelson Chase on the trial of said ejectment suit; which was as follows:

588 The defendant then went upon the stand as a witness in his own behalf, and testified before the said jury, among other things, as follows:

"I am the defendant; reside in the Jumel mansion; was born November 11, 1811. Knew Stephen Jumel; was living at his house and was one of his family when he died. He left no child or relation, to my knowledge, in this country. He was a Frenchman. I married Mary

Jumel Bowne, who was a niece of madam's; was married on the 15th January, 1832, at Judge Crippen's residence, in Worcester, Otsego County. My wife was born in 1801. Our marriage was published in the Albany Argus." Witness produced a copy of the marriage notice. It was published in the Albany Argus of January 19th, 1832. "On my arrival at Mr. Jumel's, shortly after the marriage, I handed Mr. Jumel a copy of the Argus which contained this notice. He read the notice. My wife and his wife were both present at the time. The copy now here was taken from an original in a file of the Argus, which can be produced."

(The counsel for the plaintiff consented that the copy be used
589 instead of the original.

The plaintiff objects to its being read in evidence to the jury on the ground that it is immaterial, irrelevant, incompetent, and hear say.

The presiding judge decided to overrule the objection, and allowed it to be read to the jury; to which decision and ruling the pl'ff then and there duly excepted.)

The said notice was read to the jury, and is in the following words: "Married, at Worcester, Otsego Co., on the evening of the 15th inst., by the Rev. Mr. Basset, Nelson Chase to Miss Mary Jumel Bowne, adopted daughter of Stephen Jumel, esqr., of New York."

Witness continued: My first knowledge of Madam Jumel was while I was studying law with Judge Crippin. In July, 1831, madame came to Worcester, where I was, to see Judge Crippin, bringing with her a young lady, whom she introduced as her niece. Madame said—

(Plaintiff objects to what Madam Jumel said to the witness, on the ground that it is immaterial, irrelevant, incompetent, and a declaration only.

590 The presiding judge decided to overrule the said objection, and permitted the witness to state what Madam Jumel said to him. To which ruling and decision the plaintiff then and there duly excepted.)

The witness continued: My acquaintance with the young lady continued some time and until Madame Jumel said to me, "I perceive there is a friendship between you and my niece, Miss Mary." She added, if I and Mary could agree, she would be happy to have me for a son-in-law; that if we got married, she would expect us to come and live with herself and her husband on their place. She said that Mary was her adopted daughter, and was to be her heir.

Mr. Jumel died May 22, 1832. This lady whom I married died May 5, 1843. Two children of the marriage are living. One daughter, Mrs. Eliza Jumel Pery, was born at the mansion March 25th, 1834. One son, William Inglis Chase, was born August 17, 1840. I and my family, and my daughter and her family, and my son and his family, all live in the Jumel mansion, and we have all lived there ever since Madame Jumel's death. My daughter has one child; my son has several children.

591 My wife returned to the mansion in February next after our marriage, and I followed in the next month; and from that time until the death of Mr. and Madame Jumel I and mine substantially lived with them as one family.

In the latter part of the fall of 1832 the madame procured rooms at the corner of Grand street and Elm street for my wife to live in it. We all three went to those lodgings and roomed there during the most part of the winter, the madame part of the time at the mansion, but most of the time with my wife. The reason for my wife going to that place was

to be convenient to Doctor Berger, madame's family physician, who was practising in town. Out where we were there were no doctors near at hand at that time.

On the 27th of January, 1833, my wife gave birth to a still-born child. We continued in that house until about the month of March, 1834, and then we all went back to the mansion. We remained there until the fall of 1834, and then the mansion was hired out to Mr. Pell, and madame hired part of the house No. 63 Chambers street, where we all four came to live in November, 1834. In the mean time my daughter
592 had been born. We lived there until the spring of 1835. Mr. Pell, and Mr. Monroe after him, occupied the mansion as tenants, until, I think, about 1840 or 1841. In May, 1835, we moved to 339 Greenwich street, where we all went together—madame, my wife, my little child, and myself. We resided in that house two years, leaving in May, 1837. The madame made that her home during those two years. Then madame went to Hoboken and hired a house of Asa H. Wright, where we all lived for two years. Then we went to another house in Hoboken. We hired a house of Mr. Van Boskirk, where we went to live until we moved back to the city of New York, on the first of May, 1843.

During the time we resided in Mr. Wright's house Madame Jumel made her home in the same house with us. She was a member of the family.

After we went to Mr. Van Boskirk's, the latter part of the time the mansion had become vacant, and madame went back to the mansion; whether this was in 1840 or 1841 I cannot remember.

During the period we were at Hoboken madame, in the winter season, did not lodge with us constantly, but came to the city on account
593 of the bad crossing of the river and the ice. She came over, boarded at the Astor House, and at one time for some months had furnished lodgings in Laight street. She might possibly been at other quarters; those are all I remember distinctly.

In the summer season it was a universal habit with her, and universally, as far as I can remember, she went to Saratoga. I went with her always, and when my wife was in sufficient health she went also. After 1838, when her journeys were made to Saratoga in the summer, my daughter, who was a very small girl, was always with her; and as soon as my son was old enough, she had him with her. Madame Jumel paid the rent in Chambers street and in Greenwich street and in Mr. Wright's house. She also supported the family. I had no means of any importance. I had not got into business then. After we went into Mr. Van Boskirk's house, I began to have some business, and I paid the rent there, but the support of the family during that time was mainly
594 borne by Madame Jumel, and when she got back to the mansion the same thing continued as long as we remained in Mr. Van Boskirk's house, she coming there constantly looking after things.

When Madame Jumel went back to the mansion my wife's health was declining; as it turned out, she was in her last illness. Madame Jumel had no family at the mansion during this period; nobody except servants and assistants. The intercourse between my own family at Hoboken and the madame at the mansion was kept up. It was constant. She came to the Van Boskirk house constantly, and often stayed overnight there. After she had gone back to the mansion I visited her place in the country, and my wife as far as her health permitted. There was a reason for our removing from Hoboken back to New York in May, 1843. Dr. Berger had been attending my wife dur-

ing her declining health for a year or two. The winter before our removal to New York he found it very inconvenient to get over, as the river was sometimes filled with ice. The object was that my wife
595 might be near to the same doctor—Berger.

Madame Jumel took my daughter immediately on the death of my wife, and had general charge of her and assumed the control of her. After some little time she also took my son, who was then a very small child, and from that time on she had the control of them both and kept them. She sent them to school and educated them, and they made their home with her. Madame Jumel went to France in 1853, taking those children with her. She returned from that trip to France in July or August, 1854, bringing my son with her. My daughter had got married and came back subsequently. My son continued to live with us in the mansion until the fall of 1859.

The last year Madame Jumel went to Saratoga was 1859. I brought her back myself. I went to live personally at the mansion in the spring of 1848. I then went to live there permanently. I had been accustomed to going there constantly every week, sometimes once or twice a week; but I had business in town and lodged in town.

596 From the spring of 1848 until the death of Madame Jumel, the mansion was my home; I was there living with her in the family, with two exceptions, until the time of her death, and was there at her death; I sat up all the night with her; the two exceptions to my living there were first in 1858 or 1859; I was away eight days; then from September, 1862, until the 1st of May, 1863, I lodged down town in 65th street; during that interval in 1862 and 1863 I was constantly a caller at the mansion, and saw Madame Jumel every day or two.

From the time of her death we have all lived together on the property.

I have the control of all the property for the benefit of myself and children, by their consent; the Saratoga and all the property out on the island and in the city.

When Mrs. Pery, my daughter, left the mansion in the fall of 1857 and went down to live in 7th avenue, she was suffering from very ill-health, and the air up at the mansion, which is on very high ground, was supposed to be too strong for her lungs; madame hired the
597 house at the corner of 41st street and 7th avenue, and subsequently purchased it, where Mrs. Pery, her husband, and her daughter went to live; I have the impression madame stayed there herself during a part of the winter, but I won't be certain of that.

598 Question. State what this Jumel property was when you came there, and its condition from that time to the present.

Answer. The homestead was kept as a country seat, having a garden attached to it, and out-buildings, such as a coach-house and barn; that lot was 36 acres; part of it was covered with wood, and part of it used as meadow-land.

The 94-acre lot, as it is called, was lying north of that, and lying between the old Albany post-road, since known as the Kingsbridge road, and the Harlem River; it was divided from the homestead lot by a narrow strip of land.

(The witness produces a copy of Loss' map, mentioned and referred to in all the original deeds.)

The homestead lot is No. 8.

The three original deeds to Mr. Jumel contain all that property, and 40 acres more on the west side of the Kingsbridge road; when I first knew the place, the 94 acres all lay together as one parcel without any

dividing-fences; ever since there have been no dividing fences except that where the 10th avenue has been worked through. There is now a fence along each side of that road, and at 173d street there has been a fence along that street.

599 That street and avenue have been opened within the last 12 or 15 years.

When I first knew the place the only improvements on this 94 acres were the old red house and barn, and they were on Loss' lot No. 6, as shown there.

Question. The rest was without any dividing-line?

Answer. Yes, sir; the most part of it quite wild, in a state of nature; that part of it which was not so rocky, and which was not covered by wood, was occupied for pasture-land, and some meadow-land, and occasionally a patch of corn and potatoes and like vegetables was raised; a very large portion of it was covered with wood, and lay in a wild state, substantially a state of nature.

The wood was cut for fuel for the family; when we didn't live there we got our fuel from it; it used to be sent to Hoboken, and in the city, when I lived here.

The corn and vegetables were used by the family in the same way.

To the present, with these little exceptions, that 94 acres has lain pretty much in a wild state.

No other profit than this family use has been derived from it to the present time; nothing has been marketed from it to my knowl-

600 edge; it provided subsistence for the as far as vegetables and some hay, and pasture for our cows, and some fuel.

While Mr. Pell and Mr. Mun'oe hired, I think they had no occupation of this 94 acres; there was not much use made of it. It lay there; what hay grew was cut in some way or used on the place.

This rude condition of the whole continues to the present time. If possible it is rougher now than when I first knew it. We have population there now, and they tear everything to pieces. What we have not cut off for fuel they have. Much of it is about bare as rocks can be, a very large portion of it. I should say 20 acres is nothing but one ledge of rocks, forming a very steep declivity for the whole length of the 94-acre lot down to Harlem River. What is called Fifth avenue on Loss' map is now the Tenth avenue.

The lots numbered seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen on Loss' map, together with No. 6, make up the 94 acres.

Immediately after the death of Mary, my wife, Madame Jumel seemed to be plunged in grief; she took to her bed and remained there for about a week mourning and lamenting Mary's death.

601 Question. Were you ever at the house of a woman named Ann Eliza Vandervoort?

Answer. It was on the 25th of September, 1866, that I first knew there was such a person in the world as Ann Eliza Vandervoort. On that day I received a visit at my office, 40 Exchange Place, from a son of Ann Eliza Vandervoort, whose name is James A. Vandervoort. I had never before that seen or heard of him, or any of the family. He was sworn on the last trial as a witness on the part of the plaintiff; on that day I received a letter purporting to be signed by some James Vandervoort. I received that letter the 25th of September, 1866, and the letter enabled me to fix it absolutely. It was two or three days after I received that letter that I had my first interview with Ann Eliza Vandervoort in her home in 53d street, in New York, in the fall of 1866; on my second visit, which was not long after the first—I should think not more

than two or three days—James C. Carter, my attorney, was with me. At that interview she spoke to me about the plaintiff, George Washington Bowen, and said that he was the son of Mme. Jumel. I did not say to her at that interview that I knew all about *or* that, or that the plaintiff was illegitimate, or that it was no more to him than the furthest
602 stranger in the world, for he was an illegitimate child and could not inherit anything or recover anything. Not a word of that kind ever passed my lips, either to her or to anybody in the world. I did not in any way or in any form of words or in substance any way say to that woman in either of my conversations with her that this George Washington Bowen was a son of Madame Jumel, or that I knew him to be a son of Madame Jumel, or anything of that kind. I never said to her or to anybody that the plaintiff could not inherit because he was illegitimate. I did not say to her or in her presence in either of those conversations that the plaintiff was illegitimate. I did not use the expression about its being no more to the plaintiff than the furthest stranger in the world. That I said any of these things is an entire fabrication. The statements of Mrs. Woodruff and Mrs. Ulrich as to any remarks by me on that occasion is a sheer lie.

During the second conversation Mrs. Vandervoort did say that she knew a man by the name of George Washington Bowen, and she added that he was the son of Madame Jumel. I did not say a word to her after she made that statement.

603 The defendant's counsel then asked the witness the following question:

Did you or not know at that time you visited this Ann Eliza Vandervoort, and before that, that an illegitimate child could inherit from a mother who had no legitimate issue by the laws of this State?

(To which the plaintiff objected on the ground that it was immaterial, incompetent, and irrelevant.

The presiding judge decided to overrule the objection, and allowed the witness to answer the question.

And the said plaintiff then and there duly excepted to the said decision and ruling of the said judge.)

I did; and I knew it before Mr. Carter was engaged in the business. Charles O'Conor, who was my first counsel, called my attention to it in a conference which took place in the spring of 1866. He discussed that statute, and said he did not know but that a jury might think my wife was an illegitimate daughter of Mr. and Madame Jumel born before their marriage. He said that such an opinion could do us no harm, but that we should never assert such to be the fact. My wife was dead at that time, and Mr. O'Conor said that the statute did not extend to
604 grand-children. I have searched diligently for wills of Madame Jumel and could find none except the alleged will of 1863, which has been produced on this trial. I saw in Madame Jumel's life-time the will of 1851, mentioned by Mr. Walgrove. I know the handwriting of Madame Jumel, of Mr. Inglis, and of Mr. Walgrove. That will was subscribed by her and witnessed by them. It was substantially to the same purport as the draft here produced. Since the death of Madame Jumel I have searched among the papers of the family and wherever I could suppose it possible any such could be, to see whether there were any deeds or conveyances relating to any of the property claimed in this suit to or for Madame Jumel, or to my wife, or from my wife, other than those which have been given in evidence on this trial, and I have not been able to find any.

A paper purporting to be a copy of a letter by Charles O'Conor, one

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(To which the plaintiff objected on the ground that it was immaterial, incompetent, and irrelevant.

The presiding judge decided to overrule the objection, and allowed the witness to answer the question.

And the said plaintiff then and there duly excepted to the said decision and ruling of the said judge.)

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A paper purporting to be a copy of a letter by Charles O'Conor, one

of the witness' counsel in this case, dated New York, September 24th, 1866, and addressed to Charles Hart, his associate counsel, in Providence, was here produced to the witness. He testified:

"I made this copy on September 24, 1866, and I mailed the
605 original on the next day. There is a memorandum of the fact on the back of this copy in my own handwriting, made at the time.

The defendant then read to the jury from the said letter to said Hart, testified to by him as aforesaid, words corresponding with said copy, and which were as follows:

"N. Y., *Sept.* 24, 1866.—I have no doubt about our ability to repel Mr. Bastard Bowen's attempt to get an order of filiation against the Madame Jumel estate, if he is closely attended to."

606 The complainant's counsel then read in evidence from said bill of exceptions part of the testimony of John J. Caryl on the trial of said ejectment-suit, which was as follows:

607 The defendant then called as a witness on his behalf—

JOHN G. CARYL, who testified before the said jury, among other things, as follows:

I was acquainted with Madame and Stephen Jumel; went to reside at the mansion with her in 1826. I know the Jumel property and can describe it without a map. The homestead lot was thirty-six acres, and the other lot was about one hundred acres. I went there the last of April or the first of May, and lived there until the latter part of March, 1829, excepting three little times in 1828, when I went in the country. Most of my business while there was waiting upon Madame Jumel and Mary to New York and back, taking charge of the horses and looking after the man we had in the stable and working in the vineyard and the fancy garden and the vegetable-garden, and doing chores generally. Mr. Jumel was not there when I first went there. He came in 1828, about mid-summer; then the family consisted of Mr. Jumel, madame, and Mary. After Mr. Jumel arrived and before I left, madame went, in the fall of 1828, with Mary, South, as I understood it, and they were
608 gone most of the winter. They went in the latter part of November or early part of December. Mr. Jumel remained at home. During the absence of the ladies there was no family except Mr. Jumel. I was with him during the winter.

The defendant then asked the witness the following question:

At that time did Mr. Jumel make any statement to you as to the ownership of the property whilst he was thus residing on the premises and you were there working on them under him?

To which the plaintiff then and there duly objected, on the ground that it was immaterial, irrelevant, and incompetent, and that parol evidence was inadmissible to contradict or vary a written instrument.

The defendant disavowed any such object.

The presiding judge decided to overrule the objection and allow the witness to answer the question.

To which decision and ruling of the said judge the plaintiff then and there duly excepted.

The witness further testified as follows:

After Madame Jumel and Mary went South, and while I was
609 living on the place with Mr. Jumel, he stated to me that he had given madame a power of attorney, not for the purpose that she should dispossess him or disinherit him, but in order that she should do

business for him. He said that she had sold all the property out of his hands under the power of attorney, and he had nothing left he could call his own; but he said that they had had a compromise or settlement by which the estate owed him a support as long as he lived, and in the end, at his decease and madame's, it was to go to Mary, and with that he was satisfied. In the first place, when he said the property had been sold from under him, I said, "Mr. Jumel, I knew that fact. It was done in 1827, last year;" he then made the other remarks which I have stated. On another occasion, either Christmas day, 1828, or New Year's, 1829, he stated to my father, in my hearing, that the property was sold out of his hands, but that the madame had made a settlement, or something to that effect, whereby they were to enjoy the property while they lived, and that in the end it was to go to Mary, and with that he was satisfied.

610 The complainant's counsel then read in evidence, from said bill of exceptions, part of the testimony of Matthew Clarkson and William Kemble on the trial of said ejectment-suit, which was as follows:

611 And the defendant then called as a witness MATTHEW CLARKSON, who testified as follows:

I was born in my father's house in Whitehall street, in the year 1796; my father lived in the same house until his death; in the year 1825, my father's house was on the southeast corner of Pearl and Whitehall street; it fronted on Pearl street, and together with its yard it occupied the whole front of the block on Whitehall street, from Pearl street to Water street. It was the only house on Whitehall street between Pearl street and Water street. I lived in that same house with my father until I came of age. Whilst I was a boy, Stephen Whitney lived in a house on the same side of Whitehall street; it was the corner of Pearl and Whitehall, fronting on Pearl street; it was on the block between Pearl and Bridge streets. The witness by referring to the map located his father's house and Mr. Whitney's house as being on the side of Whitehall street, on which Water street entered it from the east, and testified that when he was a boy, that part of Whitehall street was quite a residence part of the town, all built up and occupied by respectable people.

The defendant then called as a witness, WILLIAM KEMBLE, who testified as follows:

I am of the firm that carries on the West Point Foundry; my father was Peter Kemble, a merchant in New York; he lived from my earliest
612 recollection, say when I was three or four years old, at No. 17 Whitehall street, on the easterly side of that street; I was born in 1795; I went to college in 1809; during my youth and whilst going to college, my home was at my father's house in Whitehall street, for some years prior to my going to college. I remember Stephen Jumel living in a yellow double brick house at *at* the northwesterly corner of Pearl and Whitehall, fronting on the westerly side of Whitehall street, the opposite side to that on which my father lived. The witness pointed out Jumel's house on the said map and added, I remember that Mr. Jumel lived in that house for some years before I went to college. I was not personally acquainted with Mr. Jumel, nor was I ever in his house; but as a boy, before I went to college, I noticed that the residents of that house were Mr. and Madame Jumel. They had a carriage; I often saw the carriage standing there at the door, and saw Madame Jumel

occasionally riding in it, though I never was in the house, I knew as well that Mr. and Madame Jumel lived in it as I knew that General Clarkson occupied the house opposite. Carriages were by no means as numerous at that time as at present; undoubtedly they were rather few; but my father, Mr. LeRoy, General Clarkson, and some others in the neighborhood kept their carriages.

613 I heard Mr. Clarkson's testimony about the location of his father's house; it is correct.

614 The complainant's counsel then read in evidence from said bill of exceptions part of the testimony of Charles F. A. Hinrichs, on the trial of said ejectment suit, which was as follows:

615 The defendant then produced, as a witness on his behalf, one CHARLES F. A. HINRICHS, who testified before the said jury as follows:

Michael Werckmeister died in 1843. I am his executor and sole devisee, and have possession of his books and papers.

The defendant then asked the witness the following question: Have you looked among his papers for deeds relating to this property?

(To which the plaintiff objected as immaterial and irrelevant.)

The presiding judge decided to overrule the objection, and allowed the witness to answer the question.

And the said plaintiff then and there duly excepted to the said decision and ruling of the said judge.

The witness testified: After the death of Mr. Werckmeister, which was in October, 1843, I gave to Madame Jumel all the papers which he had left relating to her or her affairs, or any of the property in question. I have searched, and find that there is none left in possession of his representatives.

616 (It is admitted by the defendant here that the counsel for the said plaintiff Bowen, in the action at law, contended, among other things, on the second trial, that if the heirs of Mary Jumel Bownes had acquired any title as claimed by them, it was in equity only.)

Testimony closed.

617 The complainant's counsel then admitted that Madame Jumel at one time owned certain jewelry and diamonds, and for the purposes of this case admits that she owned them at every point of time at which it may be material to any party to assert that she did, and that their value is $5,500 beyond anything that is named in the inventory.

618 The complainants then rested their case, and the defendant's counsel, after opening the case for the defendant, produced evidence as follows:

619 The defendant read certain parts of the testimony of Daniel Hull as given by him on the said trial at law, and set forth in the bill of exceptions taken thereof, amounting, virtually and in substance, to the conclusion that he, said Daniel Hull, was present at the birth of said George W. Bowen, and that he, the said George W. Bowen, was born of Madame Jumel. The complainants declined to read the cross-examination of said Daniel Hull or any other parts of his testimony.

620 The defendant's counsel then read in evidence the judgment-record in the aforesaid ejectment-suit, in which George W. Bowen was plaintiff and Nelson Chase was defendant, and the writ of error thereon removing the said cause to the Supreme Court of the United States, which were as follows:

621 Pleas in the circuit court of the United States for the southern district of New York, in the second circuit, before the judges thereof, at the court-room in the city of New York, in the same district, on the third Monday of October, in the year one thousand eight hundred and seventy-one.

Witness: Lewis B. Woodruff, esqr., circuit judge.
KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George W. Bowen, plaintiff, put in his place Chauncey Shaffer, his attorney, against Nelson Chase, defendant in a plea of trespass and ejectment for the recovery of lands.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Nelson Chase put in his place James C. Carter, his attorney, at the suit of George W. Bowen plaintiff in the plea aforesaid.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the third Monday of October, in the year one thousand eight hundred and seventy-one, of the term of October, in the year one thousand eight hundred and
622 seventy-one, came into this court before the judges thereof, at the court-house, in the city of New York, in the district aforesaid, as well George W. Bowen, plaintiff, by his attorney aforesaid, as Nelson Chase, defendant, by his attorney aforesaid; and the said plaintiff, pursuant to the act of Congress of the United States of America, approved on the second day of March, one thousand eight hundred and sixty-seven, entitled "An act to amend an act entitled 'An act for the removal of causes in certain cases from State courts,'" approved July twenty-seven, eighteen hundred and sixty-six, then and there entered in this court copies of all process, pleadings, depositions, testimony, and other proceedings in a suit theretofore, to wit, on the 14th day of June, one thousand eight hundred and seventy-one, pending and at issue between the said plaintiff and the said defendant in the court of common pleas for the city and county of New York, one of the courts of the State of New York, and triable by the law of the said State of New York, in the city and county of New York, in the same southern district aforesaid, but not then as yet finally heard or tried, in which there was a controversy between the said plaintiff, being a citizen of a State other than the State of New York, to wit, of the State of Rhode Island, and
623 the said defendant, being a citizen of the State of New York, concerning a matter in dispute exceeding the sum of five hundred dollars, exclusive of costs, whereby it appeared that on the last-named day the said plaintiff, pursuant to the same act of Congress, did make and file in said court of common pleas a petition for the removal of the said suit into this court at the circuit court of the United States then next to be held in the district aforesaid, together with an affidavit stating that he, the said plaintiff, had reason to believe, and did believe, that from prejudice and local influence he would not be able to obtain justice in such court of common pleas, and offer such surety as in that behalf is in and by the same act of Congress required and prescribed to render such petition effectual, which surety was then and there, according to the said statute, accepted by said court of common pleas; and the said copies being so entered as aforesaid, there is found among the

same the complaint of the said plaintiff and the answer of the said defendant, as follows, to wit:

The complaint of the above-named plaintiff respectfully shows to this court that on or about the seventeenth day of July, in the year 1865, and ever since, he has been and still is the owner in fee-simple
624 with all the hereditaments and appurtenances thereunto belonging and appertaining, and at the time last aforesaid he was possessed of the following-described lands and real estate situate in the city and county of New York, in the State of New York, and bounded and described as follows, that is to say, all those certain houses and lots with the appurtenances situate in the city and county of New York, in the Twelfth ward of said city, bounded and described as follows, viz, all those certain nine lots or parcels of land and premises situate, lying, and being at Harlem Heights, in the Twelfth ward of the said city of New York, and which taken together are bounded and described as follows: on the north by lands formerly belonging to George Wear, and on the east by the Harlem River, containing ninety-four acres three roods and twenty perches, be the same more or less, being in all nine lots numbered six, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen according to a map entitled, "A map of the estate of Leonard Parkinson, esq., situate at Harlem Heights, surveyed and laid out into lots by Charles Loss, city surveyor, New York, March 1st 1810;" also all that certain other lot, piece, or parcel of ground on which Eliza B. Jumel resided and had her homestead at the time of her death, situate, lying,
625 and being in the Twelfth ward of the said city of New York, bounded and described as follows: Northwesterly by Tenth avenue, northerly by land formerly belonging to George Wear, now belonging to Shephard Knapp, easterly by the Harlem River, southerly by land formerly belonging to Beekman, and westerly by the Albany post-road, containing about thirty-two acres, be the same more or less, and being part of lot No. 8, according to said map so made by said Charles Loss, together with the buildings thereon and the tenements, hereditaments, and appurtenances thereunto belonging, a certain house and lot with the appurtenances, situate in the city and county of New York, in the Twenty-second ward of said city, and is bounded and described as follows: Commencing at a point on the westerly side of Seventh avenue, distant nineteen feet and nine inches northerly from the northerly side of Forty-first street, and running thence northerly along the westerly side of Seventh avenue nineteen feet and nine inches; thence westerly and parallel with Forty-first street sixty feet; thence southerly and parallel with Seventh avenue nineteen feet and nine inches; thence easterly and parallel with Forty-first street sixty feet to Seventh
626 avenue at the place of beginning. A certain house and lot, with the appurtenances, situate in the city and county of New York, in the Twenty-second ward of said city, and is bounded and described as follows: Commencing at a corner formed by the intersection of the northerly line of Forty-first street with the westerly line of the Seventh avenue, running thence northerly along the westerly line of the Seventh avenue nineteen feet and nine inches; thence westerly and parallel with Forty-first street sixty feet; thence southerly and parallel with Seventh avenue nineteen feet and nine inches, to the northerly line of Forty-first street; thence easterly along said last-mentioned line sixty feet, to the place of beginning, together with the buildings thereon, with the tenements, hereditaments, and appurtenances thereunto belonging. All that certain lot, piece, or parcel of land and premises situate, lying, and being in the Second ward of the city of New York, on the northeasterly

corner of Broadway and Liberty street in said city, containing in breadth in front on Broadway twenty-six feet or thereabouts, be it more or less, and in the rear twenty-five feet more or less, and in
627 length on both sides one hundred and ten feet, bounded in front west by Broadway, east by the grounds formerly of the heirs of William De Count, deceased, or their assigns, south by Liberty street, and north by the house and grounds formerly in the possession of Richard Tripp Cooper, which formerly belonged to one Lieutenant Buckley, deceased, together with the buildings, tenements, hereditaments, and appurtenances thereunto belonging, together with one-half of the wall of the house late of the said Buckley, as also a passage-way or alley from the nearest part of said lot above described, said alley being four feet in breadth, and is in the rear of said lot, which alley was formerly a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture of lease and release bearing date the first and second day of November, one thousand seven hundred and forty-seven. All that certain other piece or parcel of land situate in the Second ward of the city of New York, which was conveyed to Stephen Jumel by Mary Haight, John C. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, deceased, formerly of the
628 said city, saddler, by an indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned piece or parcel of land is described in such conveyance thereof substantially as follows: All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York: Beginning at the northeasterly corner of the said ground and running thence southerly twenty-three feet or thereabouts; thence westerly twenty-three feet; thence northerly fifteen feet or thereabouts; thence easterly six feet; thence northerly eight feet, thence easterly fourteen feet, to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie, southerly by ground now or late belonging to the said Stephen Jumel, westerly by ground belonging to the heirs of the said Benjamin Haight, deceased, and northerly, partly by ground belonging to the same heirs and partly by ground now or late belonging to the heirs of one Richard Kipp, deceased, as by annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear, together with the buildings, tenements, hereditaments, and appurtenances thereunto belonging, of all and singular of which said lands and real estate, he the said plaintiff being so possessed and being the owner thereof in fee, as aforesaid, the said defendant, as this plaintiff
629 alleges on information and belief, claiming to be the owner in fee of all and singular the said lands and real estate, and also exercising acts of ownership in the said lands and real estate and claiming title thereto, afterwards, and on or about the said seventeenth day of July, in the year 1865, entered into and upon the said premises and ejected the said plaintiff therefrom; and the said defendant is in possession of the said lands and real estate, and unlawfully holds possession of the same from the said plaintiff to his great damage.

Wherefore the said plaintiff demands that the said defendant may be adjudged to surrender the possession of the said lands and real estate to the said plaintiff, and that the said defendant be further adjudged to pay to the plaintiff all his damages for the unlawful withholding of the same, together with his costs and disbursements.

The answer of Nelson Chase, defendant, to the complaint of George W. Bowen, plaintiff, in the above-entitled action.

First. The said Nelson Chase admits that he is in possession of the lands and real estate in the said complaint mentioned, and he denies all the other allegations of the said complaint, and each and every of such allegations.

630 Secondly. And as part of each of the further and separate defences hereinafter respectively set forth, the said Nelson Chase says that the said plaintiff hath not nor ever had any right, title, interest, claim, or demand in or to the lands and real estate in the said complaint mentioned, or in or to any part thereof, or in or to any possession thereof, except such as might or may have accrued to him by an immediate descent thereof to him from one Eliza B. Jumel, deceased, in consequence of the pretended fact alleged by him that he was and is the only child and sole and only heir at law of said Eliza B. Jumel, who died intestate on the sixteenth day of July, in the year of our Lord one thousand eight hundred and sixty-five; and, further, that after the death of the said Eliza B. Jumel, and before the commencement of this action, and on or about the twelfth day of October, one thousand eight hundred and sixty-five, a certain indenture of family settlement between the said Nelson Chase and William Inglis Chase, and Eliza Jumel Pery, both hereinafter mentioned, (with others,) was in due form of law executed by the said parties thereto, respectively, under their respective hands and seals, whereby (among other things) all and singular

631 the right, title, and interest of the said William Inglis Chase and Eliza Jumel Pery, respectively, in all and singular the lands and real estate mentioned in the said complaint, and in all the estate, real and personal, of the said Eliza B. Jumel, at her death, and all claims and demands of the said William Inglis Chase and Eliza Jumel Pery, or either of them, upon or against the same lands or real estate mentioned in said complaint; and the said Eliza B. Jumel, deceased, and her estate, real and personal, were conveyed to, and vested in him, the said Nelson Chase; and, further, that all the goods, chattels, credits, and personal assets of every kind and nature of the said Eliza B. Jumel, at her death, together with all real and other estate and assets of the said Eliza B. Jumel, deceased, were not nor are sufficient in amount or value to pay, satisfy, or discharge the debt, claim, or demand which accrued to the said Eliza Jumel Pery in the second and separate defence next hereinafter set forth, or to pay or satisfy the just claims and demands which, as in the third and separate defence, hereinafter alleged, accrued to the said William Inglis Chase and Eliza Jumel Pery, respectively, on account of the fraudulent conveyance in such third de-

632 fence mentioned, or to make the restitution therein claimed; and, further, that all liabilities which were of the said Eliza B. Jumel, or her estate, real or personal, her heirs or administrators, other than such as have been so conveyed to, and vested in, the said Nelson Chase, as aforesaid, have been and were, since the death of the said Eliza B. Jumel and before the commencement of this action, wholly extinguished, by means of full payment and satisfaction thereof, with and out of the personal assets of the said Eliza B. Jumel, deceased, in due form of law made by the administration of all and singular the goods, chattels, and credits of the said Eliza B. Jumel, deceased; and, further that the said Nelson Chase is, and ever since the death of the said Eliza B. Jumel, hath been, in possession of the said lands and premises in the said complaint mentioned, in privity with the said William Inglis Chase and

Eliza Jumel Pery, respectively, and with the claims and demands thereto and thereon, and interests therein which accrued to them, respectively, as in the said respective separate defences hereinafter alleged. And, relying upon the facts for this purpose, above alleged, the said Nelson Chase, as and for his second and separate defence, further says, on information and belief, that in the life-time of the said
633 Eliza B. Jumel, and on or about the twenty-sixth day of May, in the year one thousand eight hundred and fifty-four, a treaty concerning a marriage to be thereafter had and solemnized between the said Eliza Jumel Pery, then named Eliza Jumel Chase, and one Paul R. G. Pery was, at the instance and request of the said Eliza B. Jumel, moved between the said Eliza B. Jumel on the one part, and the said Paul R. G. Pery, his father, John Edward Pery, and the said Eliza Jumel Chase of the other part, and that upon that occasion, and at the time last aforesaid, the said Eliza B. Jumel on her part did, by writing subscribed by her, represent to the said parties of the other part, that the estate of her, the said Eliza B. Jumel, then amounted in value to two millions of dollars, and that the same was at the death of the said Eliza B. Jumel to be divided between the said Eliza Jumel Chase and her brother, the said William Inglis Chase, and did then and there in like manner undertake and promise unto the said parties of the other part that if, in reliance on such provision for the said Eliza Jumel Chase in such then projected marriage, the said parties of the other part would consent to and cause such marriage to be solemnized, she, the
634 said Eliza B. Jumel, would & thereby did destine to and for the said Eliza Jumel Chase, from that day, not only one equal share or half part of such estate, but further, that if she the said Eliza Jumel Chase should be, in her said proposed marriage, and should thereafter continue to be, dutiful and affectionate toward the said Eliza B. Jumel, the said share of said estate so destined to and for her the said Eliza Jumel Chase should be increased; and that she, said Eliza B. Jumel, should and would by her last will and testament, to be in due form of law made and executed, devise, bequeath, and assure such share of said estate to her, the said Eliza Jumel Chase, at and immediately after the death of her the said Eliza B. Jumel. And the said Nelson Chase, on information and belief, further says that the estate of the said Eliza B. Jumel, at the time of such representation by her, was not worth or of the value of one million of dollars, as she well knew, and that such representation' so made by her, the said Eliza B. Jumel, in that respect were wilfully and falsely made by her with intent to deceive and defraud the said parties of the other part, and to induce them to consent
635 to and solemnize such marriage in reliance thereon. And the said Nelson Chase, on information and belief, further says that at the time when such marriage was had and solemnized as hereinafter stated, and at all times prior thereto, the said parties of the other part were and each of them was wholly ignorant of such fraud and falsehood, and that fully believing and confiding in such representations, undertaking, and promise of the said Eliza B. Jumel, and in full reliance upon the said representation and promise and undertaking, and induced thereby, they, the said parties of the other part, did, thereafter, and on the fifteenth day of July, in the year one thousand eight hundred and fifty-four, at the special instance and request of the said Eliza B. Jumel, consent to such marriage and solemnize the same, and cause it to be solemnized accordingly between the said Eliza Jumel Chase and the said Paul R. G. Pery. And the said Nelson Chase, on information and belief, further says that the said Eliza Jumel Chase, thereafter called

Pery, was happy in her said marriage, and thereafter, with regard to the said Eliza B. Jumel, did always, during the life of the said Eliza B. Jumel, continue to be dutiful and affectionate towards the said Eliza B. Jumel, and that the said Eliza B. Jumel's whole estate, at her
636 death, consisted only of property held and owned by her at the time of such representations, promise, and undertaking, or its proceeds, and did not at such death exceed in value one million of dollars; and that neither by any last will and testament or otherwise did she, the said Eliza B. Jumel, ever devise, bequeath, or in any way assure to or for the benefit of the said Eliza Jumel Pery, or of the said William Inglis Chase, any part of such estate, or any provision, support, property, or benefit whatever; and the said Nelson Chase claims and insists that by reaction of such representations, undertaking, and promise and such marriage in reliance thereon, and such default of her, the said Eliza B. Jumel in this behalf, the said Eliza Jumel Pery was, at the death of the said Eliza B. Jumel, well entitled to all the estate, real and personal, of the said Eliza B. Jumel, or left by her, and that to the exclusion of any heirs and next of kin of the said Eliza B. Jumel. And he demands judgment that any lands and real estate in the said complaint mentioned, or any part thereof, or any interest therein that may have belonged to the said Eliza B. Jumel at her death, or descended from her to the said plaintiff, be conveyed and assured to him, the said defendant, or otherwise applied according to equity, in and
637 toward satisfaction of the aforesaid debt, claim, or demand, so conveyed to him as aforesaid, and in making good and specific performance in that behalf of the aforesaid representations and undertaking of the said Eliza B. Jumel, deceased.

Thirdly. And in like manner relying upon the facts for this purpose above alleged, the said Nelson Chase as and for his third and separate defence further says on information and belief, that heretofore, to wit, in the life-time of the said Eliza B. Jumel, and on the eleventh day of December, in the year of our Lord one thousand eight hundred and twenty-seven, one Mary Jumel Bownes was seized of a good, absolute, and indefeasible estate of inheritance in fee-simple, in and to the lot of land and premises hereinafter next mentioned, the same in her actual possession then being; that is to say: all that certain lot of land and premises now situate, lying, and being, in the Twelfth ward of the city of New York, which in a certain indenture made between Murray Hoffman, one of the masters of the court of chancery of the State of New York, and Francis Berger, bearing date the thirtieth day of October, in the year one thousand eight hundred and twenty-one, are de-
638 scribed as follows: all that certain lot of land situate at Haerlem Heights, in the Ninth ward of the city and county of New York, as follows, to wit: Beginning at the Albany post-road at the northeast corner of lot number four, and running north sixty-three degrees fifteen minutes west sixteen hundred and ninety feet to the Hudson River; thence north forty-five degrees west three hundred feet, north twenty-four degrees twenty-five minutes west two hundred and ninety feet, north fifteen degrees east two hundred and ten feet, north fifty degrees forty-five minutes west ninety-one feet, north fifteen degrees thirty minutes east; one hundred and eighty-three feet to the land of Arden's line, two thousand and one hundred and sixty feet to the Albany post-road and northeast corner of lot No. five; thence along the road south fifteen degrees west four hundred and sixty-seven feet south nine degrees west two hundred and eighty-one feet, south twelve degrees west two hundred and fifty-eight feet, to the place of beginning; containing

thirty-nine acres one rood, and bounded on the north by Arden's land, on the west by Hudson River, on the south by lot number four, and on the east by the Albany post-road and number five, according to a
639 map made by Charles Loss, one of the city surveyors, of the estate of Leonard Parkinson, situated at Haerlem Heights, March the first, one thousand eight hundred and ten. And the said Nelson Chase, on information and belief, further says that the said Mary Jumel Bownes, being so seized and possessed thereof, as aforesaid, did on the same eleventh day of December, by her deed of that date in due form of law, grant and convey the same lot of land and premises with the appurtenances in fee-simple to one Michael Werckmeister, in trust, nevertheless, for the uses and purposes following in such deed expressed and declared; that is to say, in trust that the said Michael Werckmeister, and his heirs, collect and receive the rents, issues, and profits of the same, and pay over the same unto Eliza B. Jumel, or at her election suffer and permit her, the said Eliza B. Jumel, to use, occupy, and possess the said premises, and to have, take, collect, receive, and enjoy the rents, issues, and profits thereof, to and for her own separate use and benefit, and to and for such other uses and purposes as the said Eliza B. Jumel should please and think fit at her own free will and pleasure, and
640 not subject to the control or interference of any husband, and upon the further trust that the said Michael Werckmeister, or his heirs, lease, demise, let, convey, assure, and dispose of the same to such person or persons, for such term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, intents, or purposes, and in such manner and form as she, the said Eliza B. Jumel, notwithstanding any coverture, as if she were a feme sole, should by any instrument in writing executed, in the presence of any two credible witnesses, order, direct, limit, or appoint, and in case of an absolute sale of said premises, or of any part thereof, to pay over the purchase-money to the said Eliza B. Jumel, or invest the same as she should order and direct, and upon the further trust, upon the decease of the said Eliza B. Jumel, to convey the said lot of land and premises, or such parts thereof as should not have been previously conveyed by the said Michael Werckmeister, or his heirs, and with respect to which no direction or appointment should have been made by the said Eliza B. Jumel in her life-time, to the heirs of the said Eliza B. Jumel in fee-simple, and pay over to the heirs of the
641 said Eliza B. Jumel such moneys as should remain in the hands or under the control of the said party of the second part or his heirs, arising from collections of the rents and profits or the proceeds of the sales of the said lot of land and premises or any part thereof; and the said Nelson Chase, on information and belief, further says that afterwards in the lifetime of the said Eliza B. Jumel, and on the twenty-first day of November, in the year of our Lord one thousand eight hundred and twenty-eight, the said Eliza B. Jumel, by a certain instrument in writing in that behalf then made and executed by her under her hand and seal, and executed in the presence of two credible witnesses then and there signing, subscribing, and attesting the same instrument, as such, did, under and in pursuance of the power in that behalf to her granted in and by the said deed bearing date on the said eleventh day of December, one thousand eight hundred and twenty-seven, order, direct, limit, and appoint that immediately after the decease of her, the said Eliza B. Jumel, he, the said Michael Werckmeister or his heirs, (among
642 other things,) all and singular the said lot of land and premises so granted to him should convey to such person or persons, and to

such uses and purposes as she, the said Eliza B. Jumel, should by her last will and testament, under her hand and executed in the presence of two or more credible witnesses, designate and appoint, and for want thereof, then that he convey the same to Stephen Jumel, the husband of said Eliza B. Jumel, in case said Stephen Jumel should be then living, for and during his natural life, subject to an annuity to be charged thereon during such his natural life, of six hundred dollars, payable to the said Mary Jumel Bownes, and after the death of the said Stephen Jumel, or if he should not survive the said Eliza B. Jumel, then immediately after the death of her the said Eliza B. Jumel, to her the said Mary Jumel Bownes and her heirs in fee; and the said Nelson Chase further says that neither the said Stephen Jumel, nor the said Michael Werckmeister, nor the said Mary Jumel Bownes, survived the said Eliza B. Jumel, and that the same three presons all died previously to her death, and that the said Mary Jumel Bownes departed this life
643 on the fifth day of May, in the year one thousand eight hundred and forty-three, more than twenty years before the death of the said Eliza B. Jumel, and left her surviving her husband, the defendant Nelson Chase, and also the before-mentioned William Inglis Chase and Eliza Jumel Chase, afterwards Pery, her only children and only heirs at law, who are both still living; and the said Nelson Chase further says that after such conveyance to the said Michael Werckmeister, and such deed of appointment so executed by the said Eliza B. Jumel as aforesaid, and after the death of the said Mary Jumel Bownes, and on or about the fifteenth day of April, in the year of our Lord one thousand eight hundred and fifty, she, the said Eliza B. Jumel, by certain deeds of conveyance in that behalf then made, did fraudulently and in violation of the aforesaid trust and appointment, convey and cause to be conveyed and assured to one Ambrose C. Kingsland, his heirs and assigns in fee-simple absolute, the aforesaid lot of land and premises, by whom and his assigns the same have ever since been and now are held; and the said Nelson Chase further says that all and every possession, right,
644 title, interest, claim, and demand of the said Eliza B. Jumel, at her death, of, in, or to the lands and real estate in the said complaint mentioned, (if any they were,) were not at the time of the death of the said Eliza B. Jumel, or at any time since, of as much value as the said lot of land and premises so conveyed to the said Ambrose C. Kingsland, and together with all the goods, chattels, credits, effects, lands, tenements, hereditaments, and estate, and assets, real and personal or mixed, of every kind and nature, of the said Eliza B. Jumel at her death, were not and are not sufficient to pay or satisfy the just claims and demands which accrued to the said William Inglis Chase and Eliza Jumel Pery respectively, for and on account of such fraudulent conveyance of the said lot of land and premises, and making away with their respective titles and interests therein so effected by the said Eliza B. Jumel as foresaid, nor sufficient to purchase or procure for and in order to make restitution in that behalf the same lot of land and premises or other lands of equal value, and he claims and demands judgment that any lands and real estate in the said complaint mentioned, or any part thereof, or any interest therein which may have belonged to the
645 said Eliza B. Jumel at her death, or descended from her to the said plaintiff, be conveyed and assured to him the said Nelson Chase, or otherwise applied according to equity in and toward satisfaction of the claims and demands which so accrued to the said William Inglis Chase and Eliza Jumel Pery in this seperate defence set forth and

mentioned, or applied in such manner as equity may require to effect such restitution as above in this separate defence mentioned.

The reply of the plaintift to the answer of the defendant to the amended complaint of the plaintiff in this action.

The said plaintiff, replying to the said answer, upon information and belief denies each and every allegation, of new matter, contained in said answer, and hereby demands judgment as he has already in and by his said amended complaint demanded the same.

Wherefore the issues above joined are ordered by the said circuit court to be tried at the term of the said circuit court appointed to be held at the court-house in the city of New York aforesaid, in the district aforesaid, on the third Monday of October, in the year last
646 aforesaid, at which day and place, in the same circuit court, before the judges thereof, come as well the same plaintiff by his attorney aforesaid, as the same defendant by his attorney aforesaid.

And the said plaintiff, in order to conform to the practice of said circuit court, has leave to substitute in place of his said complaint, a bill or declaration, and pursuant to such leave brings into the said circuit court before the aforesaid judges thereof, now here, his certain bill against the said defendant in a plea of trespass and ejectment, which said bill follows in these words, that is to say:

George W. Bowen, plaintiff in this suit, by Chauncy Shaffer, his attorney, complains of Nelson Chase, the defendant in this suit, which was, on the petition of the said plaintiff, removed from the court of common pleas for the city and county of New York, pursuant to the provisions of the act of Congress approved March 2nd, 1867, entitled "An act for the removal of causes in certain cases from State courts, approved July 27th, 1866," being in custody &c.

For that the said George W. Bowen is a citizen of the State of Rhode Island, and the said Nelson Chase is a citizen of the State of New York. That the said plaintiff, on the 17th day of July, 1865, in the city and State of New York, was possessed of all and
647 singular the certain houses and lots of lands with the appurtenances thereto belonging, situate in the city, county, and State of New York, and bounded and described as follows, that is to say, all those certain houses and lots of land with the appurtenances situate in the city and county of New York, in the Twelfth ward of said city, bounded and described as follows, viz: All those certain nine lots or parcels of land and premises, situate, lying, and being at Harlem Heights in the Twelfth ward of said city of New York, and which taken together are bounded and described as follows: On the north by lands formerly belonging to George Wear, and on the east by the Harlem River, containing ninety-four acres three roods and twenty perches of land, be the same more or less, being in all nine lots, respectively numbered six, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, according to a map entitled "A map of the estate of Leonard Parkinson, esquire, situate at Harlem Heights, surveyed and laid out into lots by Charles Loss, city surveyor, New York, March 1st, 1810;" also all that certain other lot, piece, or parcel of ground on which Eliza B. Jumel re-
648 sided and had her homestead at the time of her death, situate, lying, and being in the Twelfth ward of the said city of New York, bounded and described as follows: Northwesterly by Tenth avenue, northerly by land formerly belonging to George Wear, now belonging to

Shephard Knapp, easterly by the Harlem River, southerly by land formerly belonging to Beekman, and westerly by the Albany post-road, containing about thirty-two acres, be the same more or less, and being part of lot number eight according to said map so made by said Charles Loss, together with the buildings thereon, and the tenements, hereditaments, and appurtenances thereunto belonging; also a certain house and lot with the appurtenances situate in the city and county of New York, in the Twenty-second ward of said city, and is bounded and described as follows: Commencing at a point on the westerly side of Seventh avenue distant nineteen feet and nine inches northerly from the northerly side of Forty-first street, and running thence northerly along the westerly side of Seventh avenue nineteen feet and nine inches, thence westerly and parallel with Forty-first street sixty feet, thence southerly and parallel with Seventh avenue nineteen feet and nine inches,
649 thence easterly and parallel with Forty-first street sixty feet to Seventh avenue at the place of beginning. Also a certain other house and lot with the appurtenances, situate in the city and county of New York, in the Twenty-second ward of said city, and is bounded and described as follows: Commencing at a corner formed by the intersection of the northerly line of Forty-first street with the westerly line of the Seventh avenue running thence northerly along the westerly line of the Seventh avenue nineteen feet and nine inches; thence westerly and parallel with Forty-first street sixty feet; thence southerly and parallel with Seventh avenue, nineteen feet and nine inches to the northerly line of Forty-first street; thence easterly along said last-mentioned line sixty feet to the place of beginning, together with the buildings thereon, with the tenements, hereditaments, and appurtenances thereunto belonging. Also, all that certain lot, piece, or parcel of land and premises situate, lying, and being in the Second ward of the city of New York, on the northeasterly corner of Broadway and Liberty street in said city, containing in breadth in front on Broadway twenty-six feet or there-
650 abouts, be it more or less, and in the rear twenty-five feet more or less, and in length on both sides one hundred and ten feet, bounded in front west by Broadway, east by the ground formerly of the heirs of William De Count, deceased, or their assigns, south of Liberty street, and north by the house and ground formerly in the possession of Richard Tripp Cooper, which formerly belonged to one Lieutenant Buckley, deceased, together with the buildings, tenements, hereditaments, and appurtenances thereunto belonging, together with one-half of the wall of the house, late of the said Buckley, as also a passage-way or alley from the nearest part of said lot above described; said alley being four feet in breadth and is in the rear of said lot, which alley was formerly a passage leading to a well as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture of lease and release bearing date the first and second day' of November, one thousand seven hundred and forty-seven. Also, all that certain other piece or parcel of land situate in the Second ward of the city of New York, which was conveyed to Stephen Jumel by Mary Haight, John
651 C. Haight, Benjamin Haight, and Halsted E. Haight, executors of the last will and testament of Benjamin Haight, deceased, formerly of the said city, saddler, by an indenture bearing date the twenty-first day of May, A. D. 1813, and which said last-mentioned piece or parcel of land is described in such conveyance thereof, substantially as follows: All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York: Beginning at the northeasterly corner of the said ground and running thence southerly twenty-three feet

or thereabouts; thence westerly twenty feet; thence northerly fifteen feet or thereabouts; thence easterly six feet; thence northerly eight feet; thence easterly fourteen feet to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie, southerly by ground now or late belonging to the said Stephen Jumel, westerly by ground belonging to the heirs of the said Benjamin Haight, deceased, and northerly partly by ground belonging to the same heirs, and partly by ground now or late belonging to the heirs of one Richard Kipp, deceased, as by annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear, together with the
652 buildings, tenements, hereditaments, and appurtenances thereunto belonging, and which said several pieces and parcels of land are together of the value more than five hundred dollars, to wit, of the value of five millions of dollars and upward, and which premises the said plaintiff claims in fee, and he the said plaintiff being possessed thereof, the said defendant afterwards, to wit, on or about the seventeenth day of July, 1865, entered into the said premises and ejected the said plaintiff therefrom, and unjustly withholds from the said plaintiff the possession thereof, to his great damage, and therefore he brings his suit, &c.

And the said Nelson Chase, by James C. Carter, his attorney, comes and defends the force and injury when, &c., and says that he is not guilty of unlawfully withholding the premises claimed by the said George W. Bowen as alleged in the said declaration of the said George W. Bowen, or any part thereof, and of this he the said Nelson Chase puts himself upon the country, and the said George W. Bowen doth the like.

Wherefore the issue as last above joined is ordered by the said circuit court to be tried at the term of said circuit court appointed to be held
653 at the court-house, in the city of New York aforesaid, in the district aforesaid, on the first Monday of April, in the year one thousand eight hundred and seventy-two, at which day and place, in the same circuit court, before the judges thereof, come as well the same plaintiff, by his attorney aforesaid, as the same defendant, by his attorney aforesaid, and the process hereof is thereupon duly continued between the same plaintiff and the same defendant, before the same judges, in the same circuit court, until the third Monday of October, in the year one thousand eight hundred and seventy-two, and the same day is given to the parties last mentioned, at the same place; at which last-mentioned, day and place, in the court aforesaid, before the honorable William D. Shipman, district judge of the United States for the district of Connecticut, the judge then solely presiding therein and holding the same pursuant to the statutes in that behalf made and provided, come as well the plaintiff aforesaid, by his attorney aforesaid, as the defendant aforesaid, by his attorney aforesaid, in the plea aforesaid, and the jurors of the jury duly summoned to try the said issues also come, who, to
654 speak the truth of the matters aforesaid, being chosen, tried, and sworn, say, upon their oath, that the said defendant is not guilty of the matters above laid to his charge in manner and form as the said plaintiff hath above complained against him, or any part thereof; and they further say that Eliza B. Jumel, deceased, at the time of her death, had no estate or interest in the land claimed in the said bill which was descendible to her heirs.

Wherefore it is considered that the said plaintiff take nothing by his said bill, but that he be in mercy, &c.; and that the said defendant do

go thereof without day. And it is further considered by the said circuit court now here that Nelson Chase, the said defendant, do recover of George W. Bowen, the said plaintiff, one thousand eight hundred and sixty-eight dollars ($1,868\frac{95}{100}$) and ninety-five cents for his costs and charges by him about his defense in this behalf laid out and expended, by the court now here adjudged to such defendant, according to the form of the statute in such case made and provided, and that such defendant have execution thereof, &c.

Judgment signed this 2d October, 1873.

R. E. STILWELL,
Deputy Clerk.

655 (Endorsed:) U. S. circuit court. Nelson Chase ads. George W. Bowen. Judgment record filed Octr. 2, 1873.

656 The defendant's counsel then read in evidence the aforesaid bill of exceptions.

The defendant's counsel then read in evidence from said bill of exceptions all the matter contained upon pages 1144 to 1147, both inclusive, which was as follows:

657 The plaintiff made no claim for the lands on Seventh avenue mentioned in the declaration; as to all the other lands mentioned in the declaration, the defendant's counsel insisted that on the undisputed facts in evidence, the defendant, as matter of law, was entitled to a verdict even if the jury should believe that the plaintiff was the heir at law of Eliza B. Jumel. The counsel on both sides agreed that, on this branch of the defence, there was no conflict of evidence, and that it was a matter for the court to determine.

The presiding judge then proceeded to charge the said jury, and during the said charge the counsel for the plaintiff asked the court to charge the jury that in determining whether the entry in the book called the King Henry book was made by Reuben Ballou, they should exclude from their consideration the several writings put in evidence by the defendant purporting to be the handwriting of said Reuben Ballou, on the ground that they were not proved to be the handwriting of Reu-

658 ben Ballou, and because they were worthless for comparison.

The presiding judge declined so to charge.

To which refusal the plaintiff then and there duly excepted.

And the presiding judge, among other things, charged the jury "and they (the said papers) are before you for such use and comparison, and testing the genuineness of that writing, Reuben Ballou's alleged handwriting, and such reliance is to be placed upon them as in your judgment they are entitled to."

To which portion of the said charge of the presiding judge the plaintiff then and there excepted.

The said presiding judge, also, among other things, charged and directed the said jury that if the plaintiff was the son of Eliza B. Jumel, they should find a verdict for the plaintiff, but if he was not her son, then they should find a verdict for the defendant, and, in addition to any verdict which the said jury might find on that point, he directed the said jury to find specially "that Eliza B. Jumel, at the time of her death, had no estate or interest in the lands claimed, which was descendible to her heirs."

659 To which latter portion of the said charge and direction of the said presiding judge, the plaintiff then and there duly excepted.

And the said jury did then and there find a verdict for the defendant,

and also found specially that the said Eliza B. Jumel at the time of her death had no estate or interest in the lands claimed which was descendible to her heirs.

And because none of the said exceptions so offered and made to the opinions and decisions of the said presiding judge do appear upon the record of the said trial, therefore, on the prayer of the said plaintiff by his said counsel, the said judge hath to this bill of exceptions put his hand and seal, at the city of New York, on this twentieth day of February, one thousand eight hundred and seventy-three.

(Signed) WILLIAM D. SHIPMAN. [L. S.]

It is admitted by the counsel for each party that the aforesaid bill of exceptions was regularly taken and signed and filed on the 30th day of April, 1873.

660 The defendant hereupon rested his case.

The complainant's counsel then read in evidence, from the said bill of exceptions, the names of the witnesses examined in the said ejectment suit, which were as follows:

661 List of witnesses sworn and depositions read, on trial between George W. Bowen vs. Nelson Chase.

TUESDAY, *December 10th*, 1872.

This cause being still on trial, the jurors are called and severally answer to their names.

Evidence for plaintiff:

Deposition of Catharine Reed Williams	read
George W. Bowen	sworn

WEDNESDAY, *December 11th*, 1872.

This cause being still on trial, &c.

Evidence for plaintiff:

George W. Bowen	recalled.
Deposition of Stephen Randall	read.
Samuel W. Brown	sworn.
Christopher Rhodes	"
Deposition of Stephen Randall	read.
" " Phillip W. Martin	"
" " George Burr	"

THURSDAY, *December 12th*, 1872.

This cause being still on trial, &c.

Evidence for plaintiff:

James Thompson	sworn,
Deposition of Mary Randall	read.
" " Maria A. Hall	"
" " Joseph Sweet	"
" " May Williams	"
" " Henry Martin	"
" " Truman Beckwith	"
" " Mary Ormsbee	"

662 FRIDAY, *December* 13*th*, 1872.

This cause being still on trial, &c.

Evidence for plaintiff:

Deposition of Mary Ormsbee (continued) ..... read.
" " Lemuel Angel ..... "
" " James Angel ..... "
Daniel Hull ..... sworn.

MONDAY, *December* 16*th*, 1872.

This cause being still on trial, &c.

Evidence for plaintiff:

Daniel Hull ..... recalled.
Deposition of Daniel Hull ..... read.

TUESDAY, *December* 17*th*, 1871.

This cause being still on trial, &c.

Evidence for plaintiff:

Daniel Hull ..... recalled.
Mary M. Mumford ..... sworn.

WEDNESDAY, *December* 18*th*, 1872.

This cause being still on trial, &c.

Evidence for plaintiff:

Mary M. Mumford ..... recalled

MONDAY, *December* 30*th*, 1872.

This cause being still on trial, &c.

Evidence for plaintiff:

Elizabeth Freeman ..... sworn

MONDAY, *January* 6*th*, 1873.

This cause being still on trial, &c.

Evidence for plaintiff.

Mary M. Mumford ..... recalled.
Deposition of Truman Beckwith ..... read.
663 Deposition of Maria A. Hall ..... read.
Henry Nordine ..... sworn.

TUESDAY *January* 7*th*, 1873.

This cause being still on trial, &c.

Evidence for plaintiff:

Henry Nordine ..... recalled.
Elizabeth W. Healy ..... sworn.
Medora L. A. Woodruff ..... "

WEDNESDAY, *January* 8*th*, 1873.

This cause being still on trial.

Evidence for plaintiff:

Medora L. A. Woodruff ..... recalled.
Edwards Pierrepont ..... sworn.
Jerome Thompson ..... "
Matilda L. Ulrich ..... "

THURSDAY, *January 9th*, 1873.

This cause being still on trial, &c.

Evidence for plaintiff:

William Henry Carroll	sworn.
George Washington Hunt	"
Helen L. Beers	"
Elizabeth Price	"
Deposition of Ann Northrup	read.
" " Margaret Stanton	"
David Wilkie	sworn.

FRIDAY, *January 10th*, 1873.

This cause being still on trial, &c.

Evidence for plaintiff:

Aaron S. Freeman		sworn.
	Anthony B. Fountain	"
664	Cyrus Cleveland	sworn.
	Alfred E. Baker	"
Francis F. Mann		"
Charity Kennedy		"

TUESDAY, *January 14th*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Charles B. Rowan	sworn.
Deposition of Smith Barker	read.
John M. Holland	sworn.

WEDNESDAY, *January 15th*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Deposition of Daniel Hull, 23d April, 1866	read.
Lucius C. Ashley	sworn.
John F. Tobey	"
Francis A. Daniels	"
Edwin M. Stone	"

THURSDAY, *January 16th*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Benjamin M. Bosworth	sworn.
Deposition of Danl. Hull, ex. Jany. 16	read.
Horace A. Follett	sworn.
Daniel R. Ballou	"
Francis A. Daniels	"
Stephen R. Whedon	"

MONDAY, *January 20th*, 1873.

This cause being still on trial, &c.

Evidence for defendant;

665	Deposition of George W. Bowen, Feb'y 28, 1871	read.
	" " " " " " 1, 1872	"
	" " Joseph Perry 1871	"

TUESDAY, *January* 21*st*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Deposition of Joseph Perry, 1871, (continued)	read.
Jason Perry	sworn.
Effingham W. Walgrove	"
Elizabeth Prindle	"
Deposition of Dexter Thurber	read.

THURSDAY, *January* 23*d*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Samuel W. Brown	sworn.
Michael W. Devine	"
Charles Hart	"

FRIDAY, *January* 24*th*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Charles Hart	recalled.
Thomas Bracken	sworn.
Paul R. G. Pery	"

MONDAY, *January* 27*th*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Paul R. G. Pery	recalled.
Benjamin A. Janvier	sworn.
William Beman	"
John J. Perry	"
666 Benjamin A. Janvier	recalled.

TUESDAY, *January* 28*th*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Eliza J. Tranchelle	sworn.
Edward G. Cook	"

WEDNESDAY, *January* 29*th*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Nelson Chase	sworn.

THURSDAY, *January* 20*th*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Nelson Chase:..... recalled.

FRIDAY, *January 31st*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Nelson Chase..... recalled.
John G. Caryl..... sworn.
David W. Fletcher..... "

MONDAY, *February 3d*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

Matthew Clarkson..... sworn.
William Kemble..... "
Thomas Bracher..... recalled.
Thomas H. Edsall..... sworn.

TUESDAY, *February 4th*, 1873.

This cause being still on trial, &c.

Evidence for defendant:

667 J. Betts Metcalfe..... sworn.
Elbert Herring..... "
Charles F. A. Himichs..... "
Deposition of John A. Corey..... read.
John J. Townsend..... sworn.
James C. Carter..... "
Deposition of Sally Ballou, Jan'y 17, 1871..... read.
do. " Philip J. Forbes..... "

WEDNESDAY, *February 5th*, 1873.

This cause being still on trial, &c.

Evidence for plaintiff:

Mary Ann Wilkie..... sworn.
James Duffy..... "
Ann Miller..... "
David Wilkie..... "
Henry Nodine..... "
Margaret Carroll..... "

THURSDAY, *February 6th*, 1873.

This cause being still on trial, &c.

Evidence for plaintiff:

Augustus Hull..... sworn.
Ezra O. C. Hull..... "
Francis C. Blesdale..... "
Robinson C. Bodfish..... "
Deposition of William Chase..... read.

"	" Daniel Hull	"
"	" Christopher Burr	"
"	" Thomas P. Potter	"
"	" Eliza B. Sprague	"
"	" Alice B. Draper	"
668	Anthony L. Dyett	sworn.
	Benjamin F. Moore	"
	Deposition of George W. Bowen, Feb'y 28, 1871	read.
	George W. Bowen	recalled.

FRIDAY, *February 7th*, 1873.

This cause being still on trial, &c.

Evidence for plaintiff:

Phoebe Ward	sworn
George W. Bowen	recalled
Artemus S. Cady	sworn
Deposition of Gideon J. Tucker, Feb'y 6, 1873	read

MONDAY, *February 10th*, 1873.

This cause being still on trial, &c.

Evidence for plaintiff:

Deposition of Gideon Tucker, (continued)	read.
John A. Shields	sworn.
William Crystal	"
Artemus S. Cady	recalled.

I certify that the foregoing is an extract from the minutes of the court on the trial of the ejectment suit of George W. Bowen agst. Nelson Chase, showing the names of the witnesses examined, or whose testimony was read, on what day and on behalf of which party.

KENNETH G. WHITE, *Clerk*.

669 It is then admitted by the defendant's counsel that the counsel for the said plaintiff, Bowen, in the action at law, contended, among other things, on the second trial that if the heirs of Mary Jumel Bownes had acquired any title as claimed by them, it was in equity only.

Case closed and submitted.

670 U. S. circuit court, southern district of New York, in equity.

NELSON CHASE & OTHERS
vs.
GEORGE W. BOWEN.

It is hereby stipulated and agreed that the four several suits mentioned in the bill of complaint as having been brought by the defendant herein against Nelson Chase, either alone or with other defendants, in the State court of New York, and which are therein stated to have been removed into this court at the instance of said defendant, were brought to recover all the real property as to which the said defendant was sought to be enjoined in this suit from bringing or prosecuting suits, the suit

originally brought in the court of common pleas being the same action as the one mentioned in the supplemental answer as having been tried and verdict and judgment had thereon in favor of the defendant therein, and the other three suits being for the recovery of the property in Saratoga County, mentioned in said bill of complaint; and
671 that in the said four suits, while the same were pending in the State courts, answers were interposed by the defendants in such suits, respectively, setting up among other things, by way of equitable defences thereto, the same matters which are set forth in said bill of complaint as the foundation and substance thereof. This stipulation is intended as a substitute for, and to prevent the necessity of returning to the Supreme Court on appeal, the pleadings, depositions, proceedings, &c., certified into this court from the State courts on the removal of said four suits into this court, and the same is to be returned to the Supreme Court on appeal in place of pleadings, depositions, proceedings, &c., so certified as aforesaid into this court.

Dated July 9th, 1874.

JAMES C. CARTER,
Solr. for Complainant.
MERRITT E. SAWYER,
Solicitor for Defendant.

(Endorsed:) U. S. circuit court. In equity. Nelson Chase & others vs. George W. Bowen. Stipulation. Filed July 9, 1874.

672 Circuit court of the United States, southern district of New York.

NELSON CHASE & OTHERS, COMPLAINANTS,
against
GEORGE W. BOWEN, DEFENDANT.

It is hereby stipulated and agreed that on the argument of this cause on appeal in the Supreme Court of the United States, (the same having been removed by appeal,) the whole of the bill of exceptions as made up and printed for the use of the said court, in the cause of George W. Bowen against Nelson Chase, and removed by writ of error to said court, may be referred to by counsel on argument of the appeal herein, as having been offered by the defendant on the trial in the court below as evidence of what took place on the trial at law, and as having been received for that purpose with the consent of the complainants, and that such bill of exceptions be taken, considered, and treated by the said court as a portion of the return upon the appeal herein; and that the same
673 may be omitted by the clerk of this court in making his said return.

Dated New York, October 10th, 1874.

JAMES C. CARTER,
Solr. for Complainants.
MERRITT E. SAWYER,
Atty. for Defendant.

674 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Samuel Blatchford, district judge.

NELSON CHASE ET AL. vs. GEORGE W. BOWEN. } In equity.

The above cause coming on for final hearing upon pleadings, (bill, answer, replication, supplemental answer, and replication.)
Mr. Charles O'Conor opens the case in favor of complainants.

Evidence for complainants:

Paul R. G. Pery	sworn.
Eliza Jumel Pery	"
Charles F. A. Hinrichs	"
Augustus F. Smith	"

675 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and seventy-four.
Present, the honorable Samuel Blatchford, district judge.

NELSON CHASE ET AL. vs. GEORGE W. BOWEN. } In equity.

The above cause being still on hearing.

Evidence for complainant:

John E. Burrill	sworn.
Henry E. Davies	"
James M. Miller	"
Eliza Jumel Tranchelle	"
Samuel Russell Childs	"
Richard C. Combs	"
Nelson Chase	"

Mr. Charles O'Conor is heard in behalf of the complainants.

676 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States-court rooms, in the city of New York, on Wednesday, the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and seventy-four.
Present, the honorable Samuel Blatchford, district judge.

NELSON CHASE ET AL. vs. GEORGE W. BOWEN. } In equity.

The above cause being still on hearing.
Mr. Charles O'Conor concludes his argument in behalf of the complainants.
The further hearing of this cause is adjourned to May 6th.

677 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Samuel Blatchford, district judge.

NELSON CHASE ET AL.
vs.
GEORGE W. BOWEN. } In equity.

The further hearing of this cause having been adjourned to this day Mr. Levi S. Chatfield is heard in behalf of the defendant.

Mr. Charles O'Conor is heard in reply.

C. A. V.

678 At a circuit court of the United States, in equity, held at the city of New York, in and for the southern district of New York, in the second circuit, on the 22d day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Present, Samuel Blatchford, district judge.

NELSON CHASE, ELIZA JUMEL PERY AND PAUL R. G. Pery, her husband, and William J. Chase, citizens of the State of New York,
vs.
GEORGE W. BOWEN, A CITIZEN OF THE STATE of Rhode Island.

This cause having been duly brought to a hearing in this court, on the bill of complaint and answer and supplemental answer, and several replications thereto, and on proofs duly taken, and Mr. James C. Carter and Mr. Charles O'Conor having been heard thereon for the plaintiffs, and Mr. Levi S. Chatfield having been heard thereon for the de-
679 fendant, and due deliberation having been thereon had, it is now adjudged and declared, and this court, in pursuance of the power and authority therein vested as a court of equity, doth adjudge and declare, that as between Eliza B. Jumel, deceased, in the bill named, and her heirs, on the one part, and the plaintiffs Eliza Jumel Pery and William J. Chase, and their assigns, on the other part, the four following indentures or deeds of conveyance mentioned in the bill of complaint were, at the times of their execution, respectively, and are, and each of them is, fraudulent and void; that is to say, that certain deed or indenture made the tenth day of January, in the year of our Lord one thousand eight hundred and thirty-four, between Eliza B. Burr, the wife of Aaron Burr, (late Eliza B. Jumel,) of the first part, Michael Werckmeister, merchant, of the second part, and Alexander Hamilton, esquire, of the third part, recorded in the office of register of the city and county of New York, in liber number three hundred and nine of conveyances, beginning at page two hundred and thirty-four; and also that certain other deed or indenture, made the twenty-first day of October, in the year last aforesaid, between the said
680 Alexander Hamilton and Eliza P., his wife, of the first part, and the said Michael Werckmeister, of the second part, recorded in the said register's office in Liber number three hundred and sixty-eight

of conveyances, beginning at page ninety-four; and also that certain other deed or indenture made the twentieth day of August, in the year of our Lord one thousand eight hundred and forty-two, between the said Eliza B. Jumel, of the first part, and Michael Werckmeister, of the second part, and Francis Phillippon, of the third part, in the bill set forth; and also that certain other deed or indenture, made on the same last-named day, between the said Francis Phillippon, of the first part, and the said Eliza B. Jumel, of the second part, in the bill also set forth.

And it is further adjudged and declared that, from and after the death intestate of the said Eliza B. Jumel, on the sixteenth day of July, in the year one thousand eight hundred and sixty-five, the said Eliza Jumel Pery and William J. Chase, and their assigns, were, and still are, entitled in fee-simple to all and singular the lands and premises in the bill mentioned as having formerly belonged to Stephen Jumel, deceased,
681 save and except the two parcels thereof sold and conveyed by the said Eliza B. Jumel to purchasers in good faith, for value, in this decree hereafter mentioned; that is to say, that certain lot of land and premises in the said bill fifthly described, which she, the said Eliza B. Jumel, conveyed to Ambrose C. Kingsland, in the said bill mentioned, on the fifteenth day of April, in the year one thousand eight hundred and fifty. And that certain other piece or parcel of land in the said bill sixthly described, which she, the said Eliza B. Jumel, conveyed to Isaac P. Martin, in the said bill mentioned, on the first day of March, in the year one thousand eight hundred and fifty-three.

And it is further adjudged and declared that, on the part of said Eliza B. Jumel and of Michael Werckmeister, deceased, the trustee in the said bill mentioned, who collected and co-operated with her as therein alleged and enabled her to effect the same, such last-named two conveyances were, as against said Eliza Jumel Pery and William J. Chase, contrary to equity and acts in violation of the trusts whereon such last-mentioned two parcels of land were conveyed to the
682 said Michael Werckmeister by Mary Jumel Bownes, as in the said bill alleged, and in each instance was a wrong and injury to the said Eliza Jumel Pery and William J. Chase, by preventing them from coming to the possession and enjoyment in fee-simple absolute of the said last-mentioned two parcels of land, in conformity with such trusts, immediately upon the death of the said Eliza B. Jumel.

And it is further adjudged and declared that the same two parcels of land at the time of the death of the said Eliza B. Jumel were of the value of three hundred and five thousand dollars, and that the said Eliza Jumel Pery and William J. Chase, and their assigns, are entitled, as against the heirs of the said Eliza B. Jumel, to have conveyed unto them in fee-simple absolute, by way of compensation for such wrongs and injuries, lands of value equal to the last-mentioned sum of money as of the last-mentioned date, not, however, to exceed the whole value of any lands descended to such heirs from her, the said Eliza B. Jumel.

And it is further adjudged and declared that the whole value of the personal estate and assets left by the said Eliza B. Jumel at her
683 death, or in any way applicable to any debts, liabilities, or obligations against her or her representatives, amounted to the sum of twenty-eight thousand six hundred and twenty-four dollars and twenty-two cents, and no more.

And it is further adjudged and declared that all the lands and real estate of the said Eliza B. Jumel left at her death and descendible to her heirs, being the several pieces or parcels of land in the said bill seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly,

and fourteenthly in the said bill described, were not at her death of greater value than the sum of sixty-eight thousand seven hundred dollars, and that the whole of such personal estate and assets, and of such lands and real estate, of said Eliza B. Jumel, together with the sum of two thousand five hundred dollars mentioned in the bill and answer as having been received by the above-named defendant from Charles K. Covert, was and is wholly insufficient to make such compensation as aforesaid.

And the plaintiffs in this cause having elected not to make any other or further claim or demand than to the property aforesaid of said Eliza B. Jumel for any of the causes aforesaid against the estate, real
684 or personal, of the said Eliza B. Jumel, deceased, or her administrators, next of kin, or heirs-at-law, it is ordered, adjudged, and decreed that the defendant, George W. Bowen, be, and he is hereby, directed to pay unto the plaintiff, Nelson Chase, the said sum of two thousand and five hundred dollars, with interest thereon at the rate of seven per centum per annum from the twenty-first day of November,

	2,500
Int	284 41
Cost	142 87
	$2,927 28

one thousand eight hundred and seventy-two, and the costs of this suit to be taxed, and that the said Nelson Chase have execution out of this court for the same.

And it is further ordered, adjudged, and decreed that the said George W. Bowen and his heirs and assigns, and his *heir*, their counsellors, solicitors, attorneys, and agents be, and he and they hereby is and are henceforth and forever enjoined and restrained from commencing or prosecuting at law any suit or suits, action or actions, proceeding or proceedings for the recovery of any real or personal estate in the said bill mentioned, or which was of the said Eliza B. Jumel, or any claim or claims to the same, or any part thereof, as or on pretence of being an heir at law or next of kin of her the said Eliza B. Jumel, deceased,
685 provided, however, that he, the said George W. Bowen, shall be at liberty to proceed to a final decision in the Supreme Court of the United States upon the writ of error mentioned in the supplemental answer in this cause, and that no proceedings shall be had by the plaintiffs in this cause to dismiss for want of prosecution any of the suits or actions mentioned in the bill in this cause as now pending in this court until the aforesaid decision in the Supreme Court of the United States or the dismissal of such writ of error.

(Signed) SAML. BLATCHFORD.

(Endorsed:) U. S. circuit court. Nelson Chase et al. vs. George W. Bowen. Decree. Filed June 22, 1874.

686 Circuit court of the United States for the southern district of New York.

NELSON CHASE, ELIZA JUMEL PERY, AND Paul R. S. Pery, her husband, and William J. Chase, complainants,
against
GEORGE W. BOWEN, DEFENDANT. } In equity.

To the honorable the Supreme Court of the United States:

The appeal of George W. Bowen, the above-named defendant and appellant, respectfully showeth:

That, upon the twentieth day of February, 1873, the above-named complainants filed their bill in the circuit court of the United States for

the southern district of New York against the above-named defendant and appellant, alleging and aver'ing, in substance, that on the ninth day of April, 1804, one Stephen Jumel was married at the city of New York, to one Eliza Brown, who was thereafter known as Eliza B. Jumel; that the' lived together until the 22nd day of May, 1832, when he died,
687 intestate; that Eliza B. Jumel, his wife, survived him, and died at the city of New York July 9th, 1865, in the 89th year of her age, intestate; that in or about the year 1805, said Jumel and wife adopted as their child a young girl of tender years, whom they afterwards supported and educated, and who, on the 15th day of January, 1832, married Nelson Chase, one of the complainants therein; that said child, afterwards known as Mary Chase, continued to occupy and sustain the position of adopted child as aforesaid until her death, which occurred on the 5th day of May, 1843; that she then left her surviving, her husband, Nelson Chase, and her two children, Eliza Jumel Perry, who was born on the 25th day of March, 1834, and William I. Chase, born August 17th, 1840, her only heirs at law, each of whom are complainants herein; that Eliza B. Jumel, on the death of said Mary Chase, adopted the complainant, William I. Chase, and Eliza Jumel Pery, and maintained & supported them—the former until he was nineteen years of age, and the latter until the time of her marriage; that Stephen Jumel in his life-time, and prior to June 2nd, 1815, was possessed
688 & seized in fee of—

First. All that parcel of land and premises situate, lying, and being in the Second ward of the city of New York, on the northeasterly corner of Broadway and Liberty street, in said city, containing in breadth in front on Broadway twenty-six feet or thereabouts, be it more or less, and in the rear twenty-five feet, more or less, and in length on both sides one hundred and ten feet, bounded in front west by Broadway; east by the ground formerly of the heirs of William De Count, deceased, or their assigns; south by Liberty street, and north by the house and ground formerly in the possession of Richard Tripp Cooper, which formerly belonged to one Lieutenant Buckley, deceased, together with the buildings, tenements, hereditaments, and appurtenances therewith belonging, together with one-half of the wall of the house late of the said Buckley, as also a passage-way or alley from the nearest part of such parcel, said alley being four feet in breadth and is in the rear of such parcel, which alley was formerly a passage leading to a well, as
689 the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture of lease and release, bearing date the first and second day of November, one thousand seven hundred and forty-seven.

Secondly. All that other parcel of land situate in the said Second ward, which was conveyed to Stephen Jumel by May Haight and John C. Haight, Benjamin Haight, and Halstead E. Haight, executors of the last will and testament of Benjamin Haight, deceased, formerly of the said city, saddler, by an indenture bearing date the twenty-first day of May, A. D. eighteen hundred and thirteen, and which said last-mentioned parcel of land is described in such conveyance thereof substantially as follows:

All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground, and running thence southerly twenty-three feet or thereabouts; thence westerly twenty feet; thence northerly fifteen feet or thereabouts; thence easterly six feet; thence northerly eight feet; thence easterly fourteen feet, to the place of beginning,

690 and bounded easterly by ground now or late belonging to one Peter Ogilvie; southerly by ground now or late belonging to the said Stephen Jumel; westerly by ground belonging to the heirs of the said Benjamin Haight, deceased; and northerly partly by ground belonging to the same heirs and partly by ground now or late belonging to the heirs of one Richard Kipp, deceased, as by annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear, together with the buildings, tenements, hereditaments, and appurtenances thereunto belonging.

Thirdly. All those certain other nine lots or parcels of land and premises situate, lying, and being at Harlem Heights, in the present Twelfth ward of the said city of New York, and which, taken together are and described as follows: On the north by lands formerly belonging to Mrs. Bauer, on the west by the then Albany post-road, now called Broadway, on the south by land formerly belonging to George Wear, and on the east by the Harlem River, containing ninety-four acres three roods and twenty perches, be the same more or less, being in all nine lots,
691 respectively numbered six, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, according to a map entitled, "A map of the estate of Leonard Parkinson, esquire, situate at Harlem Heights, surveyed and out with lots by Charles Loss, city surveyor, New York, March 1, 1810."

Fourthly. All that certain other lot or parcel of ground on which Eliza B. Jumel resided and had her homestead at the time of her death, situate, lying, and being in the present Twelfth ward of the said city of New York, bounded and described as follows: Northwesterly by Tenth avenue, northerly by land formerly belonging to George Wear, afterward belonging to Shepherd Knapp, easterly by the Harlem River, southerly by lands formerly belonging to Beekman, and westerly by the said Albany post-road, containing about thirty-two acres, be the same more or less, and being part of lot numbered eight, on the said map so made by said Charles Loss, together with the buildings thereon, and the tenements, hereditaments, and appurtenances thereunto belonging; and,

Fifthly. All that certain other lot of land and premises situated
692 in the present Twelfth ward of the city of New York, bounded as follows, that is to say, by a line beginning at the then Albany post-road, now called Broadway, at the northeast corner of lot number four, and running north sixty-three degrees fifteen minutes west sixteen hundred and ninety feet to the North or Hudson River; thence north forty-five degrees west three hundred feet, north twenty-four degrees twenty-five minutes west two hundred and ninety feet, north fifteen degrees east two hundred and ten feet, north fifty degrees forty-five minutes west ninety-one feet, north fifteen degrees thirty minutes east one hundred and eighty-three feet, to the land now or formerly of Arden's; thence south seventy-one degrees thirty minutes east along Arden's line two thousand one hundred and sixty feet, to the said Albany post-road, and northeast corner of lot number five; thence along the same road south fifteen degrees west four hundred and sixty-seven feet, south nine degrees west two hundred and eighty-one feet, south twelve degrees west two hundred and fifty-eight feet, to the place of beginning, containing thirty-nine acres one rood, and bounded on
693 the north by said Arden's land, on the west by the said North or Hudson River, on the south by the said lot numbered four, and on the east by the said Albany Post-Road, and numbered five, on the said map made by Charles Loss.

That at *at* that time the said Stephen Jumel lived upon the parcel of ground thirdly above described until his death, his family consisting of his wife and adopted daughter, until the marriage of the latter with the complainant, Nelson Chase, after which he also formed a part of said family; that after the death of Stephen Jumel, Eliza B. Jumel, his widow, Nelson Chase, and his wife Mary, Mary Jumel Pery, and Walter J. Chase, whilst respectively in life, dwelt together as one family; that by conveyances made prior to December 11th, 1827, the lands firstly, secondly, thirdly, and fifthly above described, became vested in Mary Chase, by her then maiden name of Mary Jumel Bowen aforesaid, in fee-simple; that on the last-named day she conveyed to Michael Werckmeister the lands firstly, secondly, and fifthly above described, in trust; that prior to May 13th, 1828, the lot of land hereinbefore de-
694 scribed, and known as lot eight upon Loss' map before mentioned, became vested in fee by conveyance in Mary Chase, by her then maiden name of Mary Jumel Bowen; that on the day last named she conveyed the same to the said Michael Werckmeister, upon the same trusts as in the last-named deed of December 11th, 1827; that on the 21st day of November, 1828, Eliza B. Jumel, the beneficiary named in said trust-deed, by an instrument in writing executed in the manner provided in the said trusts, and in pursuance of the power given her in and by said trusts, did order, limit, and appoint that, immediately after her death, the aforesaid Michael Werckmeister should grant and convey all the lands described in said trust-deed bearing date December 11th, 1827, to such persons as she should by will direct, in default of will, then to her husband for life, with an annuity of $600 to Mary Jumel Bowen; and on his death, or in case he should not survive his wife, then immediately upon her death, then to Mary Jumel Bowen and her heirs in fee; that at or before the making of the said last-
695 named instrument, the lands thirdly above described were in due form of law settled legally or beneficially to the benefit of said Mary Jumel Chase and her heirs in fee, substantially in like manner as in said last-named instrument specified; that Michael Werckmeister died before the death of Eliza B. Jumel, and without leaving any heir competent to take lands from him; that after the death of Stephen Jumel, Eliza B. Jumel acquired title in fee to—

Seventhly. All that certain parcel of land, situate, lying, and being in the Twenty-second ward of the said city of New York, bounded and described as follows: Commencing at a corner formed by the intersection of the northerly line of forty-first street with the westerly line of the Seventh avenue, running thence northerly along the westerly line of the Seventh avenue nineteen feet nine inches; thence westerly and parallel with Forty-first street, sixty feet; thence southerly and parallel with Seventh avenue, nineteen feet nine inches to the northerly line of Forty-first street; thence easterly along said last-mentioned line sixty feet to the place of beginning, together with the buildings there-
696 on, and the tenements, hereditaments, and appurtenances thereunto belonging.

Eighthly. All that certain dwelling-house and parcel of land, situate, lying, and being in the Twenty-second ward of the city of New York, bounded and described as follows: Beginning at a point on the westerly side of Seventh avenue, distance nineteen feet and nine inches northerly from the northerly side of Forty-first street, and running thence northerly along the westerly side of Seventh avenue nineteen feet and nine inches; and thence westerly and parallel with Forty-first street sixty feet to Seventh avenue, at the place of beginning, together with the

buildings thereon, and the tenements, hereditaments, and appurtenances thereunto belonging.

Ninthly. All that certain farm situate in the town of Saratoga Springs, in the county of Saratoga and State of New York, containing one hundred and sixty-two acres one rood and thirty-two perches of land, and more particularly described in a certain deed of conveyance thereof, bearing date the third day of September, one thousand eight hundred and thirty-six, made by Isaac Taylor and Betsy, his wife, to the
697 said Eliza B. Jumel.

Tenthly. All that certain other farm situate, lying, and being in the said town of Saratoga Springs, containing fifty-five acres and a half acre of land, and more particularly described in a certain deed of conveyance thereof, bearing date the twenty-ninth day of August, one thousand eight hundred and thirty-six, made by William L. F. Warren and Eliza, his wife, to the said Eliza B. Jumel.

Eleventhly. All that certain other parcel of land situate on the westerly side of Circular street in the said village of Saratoga Spring, and more particularly described in a certain deed of conveyance thereof, bearing date the sixteenth day of September, one thousand eight hundred and fifty-one, made by John Hodgman and Zilpha Hodgman, his wife, to the said Eliza B. Jumel.

Twelfthly. All that certain parcel of land situate in the said village of Saratoga Springs, (and being a part of a farm called the Sadler farm,) containing five acres of land, and more particularly described in a certain indenture, bearing date the eleventh day of November, one thousand eight hundred and thirty-five, made by William L. F. War-
698 ren and Eliza, his wife, of the first part, and William Lord, jr., and Charles J. Stearns, of the second part.

Thirteenthly. All that certain lot of land situate in the village of Saratoga Springs, (and being part of a farm called the Saddler farm,) containing ten acres one rood and twenty-seven perches of land, and more particularly described in a certain indenture, bearing date the tenth day of March, one thousand eight hundred and thirty-six, made between William L. F. Warren and Eliza, his wife, and Marvin Holden, of the second part; and,

Fourteenthly. All that certain other lot of land situate in the said village of Saratoga Springs, (and being a part of a farm called the Saddler farm,) containing nine acres three roods and sixteen perches of land, and more particularly described in a certain indenture, bearing date the twelfth day of March, one thousand eight hundred and thirty-six, made between William L. F. Warren and Eliza, his wife, of the first part, and Eliza Hull, of the second part.

That Eliza B. Jumel died seized and possessed of all said lands,
699 seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly above described; that on April 15th, 1850, Eliza B. Jumel, fraudulently and in violation of the aforesaid trust and appointment, conveyed to Ambrose C. Kingsland the land fifthly above described, and on March 1st, 1833, the said Eliza B. Jumel, by a like fraudulent deed, conveyed to Isaac P. Martin "all and singular that triangular piece or parcel of land situate in the Twentieth ward of the city of New York, bounded as follows: On the east by the Tenth avenue, on the north by land now or late of Shepherd Knapp, formerly Wear's land, and at one time known as the Cross Keys property; and on the west by the Kingsbrid'e road, containing about three acres more or less," being a part of lot eight on Loss' map, hereinbefore mentioned; that for and by reason of said two fraudulent conveyances, the said

Eliza B. Jumel, and at her death her real and personal representatives, were bound to make restitution therefor to Eliza Jumel Pery and William I. Chase, which liability still continues, and is included in the conveyance by them to the complainant, Nelson Chase, hereinafter mentioned; that by reason of and relying upon
700 certain false and fraudulent representations made by Eliza B. Jumel to Eliza Jumel Chase, (now Pery,) Paul R. G. Pery, complainant, and John Edward Pery, the father of said Paul R. G. Pery, in that she, Eliza B. Jumel, was worth two millions of dollars, and that she intended, at her death, to secure one-half of it to Eliza Jumel Chase, in case she remained loving and dutiful towards her; and, further, that in case the said persons should consent to and cause a marriage to be solemnized between two of said persons, namely, Paul R. G. Pery and Eliza Jumel Chase, that she, from that day, would and did destine to and for the said Eliza Jumel Chase, not only one-half of her property, but that the same should be increased in case the said marriage should be a happy one, and said Eliza Jumel Chase should remain dutiful, &c., as aforesaid; that said marriage was a happy one, and said Eliza Jumel Chase did remain dutiful, &c., as aforesaid, but that the said Eliza B. Jumel did not perform her part of said contract, and that the representations before mentioned were false, in that the property of said
701 Eliza B. Jumel did not at any time exceed one million of dollars in value, by reason of which said Eliza Jumel Chase, (now Pery,) upon the death of said Eliza B. Jumel, was well entitled to all the estate, real and personal, of the said Eliza B. Jumel, or left by her, and that to the exclusion of any heirs, next of kin, devisees, or legatees of the said Eliza B. Jumel; and, further, that by reason of said false and fraudulent representations, the said Eliza Jumel Pery was entitled to recover from said Eliza B. Jumel, or her legal representatives, one million dollars as compensation for her damage suffered by reason of such false and fraudulent representations; that Eliza B. Jumel, at her death, left a paper-writing purporting to be a will, which was, in an action for that purpose brought by the complainant Nelson Chase and others against the executors therein named, in the supreme court of the State of New York, adjudged by said court to be invalid as a will; that William B. Jones, Stephen Jumel Jones, Eliza Jumel Franchell, and Louisa Jumel Maddox, the nephews and nieces and only legitimate heirs at law of Eliza B. Jumel, on the 29th day of July, 1865, conveyed to the complainant Nelson Chase
702 all their share and interest in the property, real and personal, of which the aforesaid Eliza B. Jumel died seized or possessed; that on the 12th day of October, 1865, a family settlement was made between the complainants, Nelson Chase, William I. Chase, and Eliza Jumel Pery, whereby all claims and demands of the said William J. Chase and Eliza Jumel Pery against the estate of Eliza B. Jumel, and all their interests therein, conveyed to the said Nelson Chase, upon certain trusts therein mentioned; that at her death Eliza B. Jumel was not in equity or otherwise, or at law, for her own use or benefit, seized or possessed or otherwise entitled to any lands, tenements, hereditaments, or real estate, or effects which could pass by descent or inheritance or otherwise, by act or operation of law, to any heirs or heirs of her, the said Eliza B. Jumel, deceased, or which in any way at law or in equity could be charged or made chargeable for any debt, liability, or duty of the said Eliza B. Jumel, or for any claim or demand against her or her estate, save and except only the lands and premises, with their appur-
703 tenances, seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly hereinabove described.

That on the 22nd day of November, 1866, letters of administration upon the estate of Eliza B. Jumel were duly granted to William C. Wetmore and William B. Jones, and that said administrators paid all debts, claims, due or owing by her, excepting the claims of William I. Chase and Eliza Jumel Pery, herein mentioned.

That the property of Eliza B. Jumel at the time of her death was not of sufficient value to pay the claims against her estate of the complainants William I. Chase and Eliza Jumel Pery, as herein alleged and particularly set forth.

That on the 20th day of August, 1842, there were simultaneously executed two deeds purporting to convey the premises firstly, secondly, and thirdly above described, one being by Eliza B. Jumel, of the first part, Michael Werckmeister, of the second part, and Francis Phillipon, of the third part, and the other by Francis Philipon of the first part, and Eliza B. Jumel, of the second part; that no consideration was paid by or on behalf of either of the grantees named in said deeds, and
704 that such deeds were and are fraudulent and void, as to the complainants William I. Chase and Eliza Jumel Pery.

That on the 10th day of January, 1834, a deed was executed by Eliza B. Jumel and Michael Werckmeister to Alexander Hamilton of the land thirdly above described, and on the 21st day of October, 1834, the said Alexander Hamilton executed a deed of the said premises to Michael Werckmeister in trust, and that both such deeds are fraudulent and void as to the complainants.

That Eliza B. Jumel at the time of her marriage with Stephen Jumel had little or no property, and that after that she never had any intercourse with any of her relatives by blood or affinity, excepting her sister Maria Jones, now deceased.

That the defendant claims to be the illegitimate son of Eliza B. Jumel, and has instituted several suits or actions at law against the complainant Nelson Chase to recover the whole of the lands hereinbefore described, some of which actions are still pending and undetermined.

That the issue made by said actions and claim of the defendant
705 are of no substantial importance, inasmuch as he would be bound, in compliance with the trusts hereinbefore set forth, to grant and convey in fee-simple to the complainants, Eliza Jumel Pery and William I. Chase, or to their grantee, Nelson Chase, all the interest or estate that should be held to have come to him by inheritance from the said Eliza B. Jumel, in and to all and singular the lands conveyed by said Mary Jumel Chase, as hereinbefore set forth, to Michael Werckmeister; and also to apply all other estate, real or personal, which might have come to him from Eliza B. Jumel, as her heir at law or next of kin, towards satisfaction of the claims of William I. Chase and Eliza Jumel Pery herein set forth.

That it is claimed by the defendant that at law the technical, legal estate in the lands granted to Michael Werckmeister, as herein set forth, is vested in the said defendant, and that even though the complainants, or some of them, be the equitable owners thereof, he is still entitled to recover the same at law in the actions in which he is plaintiff, before mentioned; and that the claims of the complainants, William I.
706 Chase and Eliza Jumel Pery, herein set forth, are only enforcible in equity.

That on November 21st, 1872, one Charles Covert was in possession of the premises seventhly and eighthly herein described, under a conveyance theretofore made to him by the complainant Nelson Chase, and that on the day last named the defendant did falsely and fraudulently take

an undue advantage of said Covert, and by means of his pretended claim to said land did procure said Covert to pay him $2,500 for a formal conveyance of his interest therein; that said Covert paid the same with a full notice and conviction of the invalidity of said defendant's claim, and therefore has no claim upon the complainants to recover the same back, but that complainants are entitled to recover the same from the defendant in part satisfaction of their claims against the estate of Eliza B. Jumel.

That upon the day of , 1873, the defendant above named filed his answer to said bill in the circuit court of the United States for the southern district of New York, setting up, in substance, that he

707 admits the marriage of Stephen Jumel then with a woman called Eliza Brown in the complaint, but whose real name was Eliza or Betsy Bowen, until about the time of said marriage, when she assumed, or in some manner unknown to defendant took, the name of Eliza Brown.

That he admits that said Jumel lived with his said wife, but not continuously until his death.

He admits the death of Eliza B. Jumel, as therein stated.

He denies the adoption of the child, called Mary Jumel Chase, by Stephen Jumel and wife, or that they took said child under their protection or support, or that she married Nelson Chase with their consent, or that they invited said Chase and wife to their house.

He admits that said Chase and wife were supported at intervals by said Jumel's wife, and otherwise greatly assisted by her, without the concurrence of the said Jumel.

He denies that said Mary Jumel Chase, after her marriage and until her death, continued to be recognized by said Jumel and wife as their adopted daughter.

He avers that said Mary, at or about the time of her marriage,

708 assumed or added to her name the word "Jumel."

He admits that she left her surviving the persons named in the complaint, born at the time therein alleged.

He denies that Eliza B. Jumel assumed guardianship and control of Eliza Jumel Pery and William I. Chase, as her adopted grandchildren, but admits that they were harbored by her, and were supported and educated by her as beneficiaries, but not as adopted grandchildren or wards.

He admits the ownership by Stephen Jumel of the lands firstly, secondly, thirdly, fourthly, fifthly, and sixthly above described, and that he occupied as a home the portion thereof alleged in the complaint to have been so occupied by him, and that, after his death, they were occupied by, and were in the possession of, Eliza B. Jumel until her death.

He admits the conveyance by Stephen Jumel to Mary Jumel Bowens, and by Mary Jumel Bowens to Michael Werckmeister, of the lands firstly, secondly, thirdly, fourthly, fifthly, and sixthly described in the complaint,

709 which conveyances were for the sole use and benefit of Eliza B. Jumel and her heirs, and were made with the intent and for the purpose of passing the title in fee-simple absolutely to the said Eliza B. Jumel and her heirs, and that he denies each and every other allegation in said complaint in reference to said conveyances.

He admits that on the 21st day of , 1828, said Eliza B. Jumel did execute a paper-writing, but denies that it contained the provisions or was of the force or effect in said complaint alleged; and alleges that it

ceased to be of any force or effect after the conveyance by Michael Werckmeister and Eliza B. Jumel to Francis Philipon.

He denies all other allegations in said complaint in reference to said paper-writing.

And also further denies that all part or any part of the said lands "thirdly described" in said bill were at or before the making of said alleged deed of appointment in due form of law settled legally or beneficially to the benefit of said Mary Jumel Chase, or to her heirs, in fee or otherwise, but he admits that the said Michael Werckmeister died without issue before said Eliza B. Jumel departed this life.

710 He admits that all and singular the lands and real estate, with the appurtenances mentioned and described in the complainant's said bill of complaint, (except the said land in the county of Saratoga, and the said lands seventhly and eighthly described in said bill,) were, in the year' 1827 and 1828, or thereabouts, duly vested in Michael Werckmeister, mentioned in said bill of complaint, in trust for the sole and exclusive use, benefit, and advantage of the said Eliza B. Jumel, and for the sole and exclusive use and benefit of her heirs at law forever, and that the said Eliza B. Jumel had, by the terms of the said trust, sole and exclusive power and authority to sell the same in fee, and to direct the said trustee to convey the same to such person or persons as should thereafter purchase the same of the said Eliza B. Jumel, and that by the terms of said trust the said Eliza B. Jumel, the sole donee therein named, had no power, right, or authority to direct or appoint the disposition of said property after her death, and that the said paper designated by the plaintiffs in their said bill of complaint as

711 a deed or instrument of appointment was, at the time of the execution thereof, and at all times thereafter, inoperative and void and ineffectual in law to convey any title to said land and real estate, or any interest therein, as will more fully appear by reference to said trust-deed and said instrument of appointment, reference being thereto had.

That the said Michael Werckmeister departed this life in or about the month of October, in the year eighteen hundred and forty-six, and thereupon the said Eliza B. Jumel, by virtue of the various statutes of the said State of New York, then in force, and especially by virtue of the provisions of article two, chapter one, title two, of the revised statutes of said State, entitled "Of uses and trusts," not only became confirmed in her aforesaid title, but she thereupon became the owner in fee of all and singular the said lands and real estate mentioned and described in said bill, (excepting therefrom as aforesaid.)

He admits that Eliza B. Jumel, after the death of Stephen Jumel, acquired the lands seventhly, eighthly, ninthly, tenthly, elev-

712 enthly, twelfthly, thirteenthly, and fourteenthly described in the bill, and that she died seized and possessed of all of them.

He avers that he never made, and never intended to make, any claim to the lands conveyed to Ambrose C. Kingsland and Isaac P. Martin; and further, that Eliza B. Jumel, at the time of making such conveyances, was the sole owner in fee of said lands, with full power to convey the same.

He denies that she fraudulently conveyed the same, and denies all allegations of fraud in said bill as to said conveyances.

He avers that at the time of such conveyances said lands were unincumbered, and were not subject to any trust-deed or paper-writing whatever; and denies that by reason of said conveyances, either the said Eliza B. Jumel, at her death, or her real or personal representatives, were or are bound to make any such restitution as is claimed in the bill.

He admits the alleged marriage between Paul R. G. Pery and Eliza Jumel Chase, but denies the making of any agreement or treaty of marriage, as is alleged in the bill.

He denies all the allegations in said bill as to the representa-
713 tions of Eliza B. Jumel as to the value of her property and her intentions in relation thereto, and also her promises in relation thereto, and every the allegation in respect to the aforesaid treaty of marriage and representations and promises by said Eliza B. Jumel.

He denies that Eliza B. Jumel knowingly or wilfully made any false or fraudulent representations, as set forth in the bill, or that they were confided in, or relied or acted upon, as therein alleged.

He denies that Eliza Jumel Pery was happy in her marriage, nor was she dutiful and affectionate towards Eliza B. Jumel.

He alleges that Eliza B. Jumel made suitable provision for Eliza Jumel Pery, and denies that she, said Eliza Jumel Pery, was, on the death of Eliza B. Jumel, to receive any sum whatever from the real or personal representatives of said Eliza B. Jumel.

He denies that William B. Jones, Stephen Jumel Jones, Eliza Jumel Franchell, and Louisa Jumel Maddox were the nephews and nieces
714 of Eliza B. Jumel; nor were they or William I. Chase, or Eliza Jumel Pery, or any of them, heirs at law of Eliza B. Jumel.

He denies the making of the alleged deed from said William B. Jones, Stephen Jumel Jones, Eliza Jumel Franchell, and Louisa Jumel Maddox to Nelson Chase, as alleged in the bill.

He denies the making of the family-agreement set forth in the bill, and avers that all instruments made by the last above-named parties, or by any of the complainants herein, were made to cheat and defraud the defendant, and are void as against him.

He avers that Eliza B. Jumel died seized in fee of all the lands described in the complaint, excepting the two pieces conveyed to Ambrose C. Kingsland and Isaac P. Martin.

He denies all and singular the statements and allegations in said bill as to the value of the estate of Eliza B. Jumel at her death, and that the same was not sufficient to pay the demands of William I. Chase and Eliza Jumel Pery.

He admits the making of the deed by Eliza B. Jumel and Michae-
715 Werckmeister to Francis Philopon, and the deed by Francis Philopon to Eliza B. Jumel, and avers that thereby and by the death of Michael Werckmeister, Eliza B. Jumel became the absolute owner in fee of all the lands therein described.

He denies all the allegations of the complaint in respect to said conveyance, excepting as above stated.

He admits the making of the deed by Eliza B. Jumel and Michael Werckmeister to Alexander Hamilton, and the deed by Alexander Hamilton to Michael Werckmeister, and he denies every allegation in said bill contained in respect to said two conveyances, excepting as above admitted.

He denies that Maria Jones is or was the sister, or a relative by blood, of Eliza B. Jumel, or that she ever had any intercourse with said Maria Jones or other relative by blood, excepting the defendant.

He admits that he claims to be the son and only child of Eliza B. Jumel, and that he has commenced actions against the complainant, Nelson Chase, to recover the lands described in the bill, he being
716 wrongfully in possession thereof, some of which actions are pending.

He alleges that he was born on the 9th day of October, 1794, at Prov-

idence, R. I., of the body of Eliza B. Jumel, then known as Betsy Bowen.

He denies that the only material issue which has been raised, or which is capable of being raised, in the actions by the defendant against the complainant, Nelson Chase, is whether he, the defendant, is the son born of the body of Eliza B. Jumel; but, on the contrary, he avers that every issue raised, or which can be raised under the bill herein, have each and all been raised, heard, and determined upon the trial of the actions aforesaid, as alleged in the bill herein.

He denies the allegation in the bill that the issue above named is of no substantial importance or pecuniary consequence as between the parties hereto, for the reasons therein stated.

He alleges that he is the owner in fee of all the lands described in the bill herein, excepting that portion thereof sold to Messrs. Kingsland & Martin, and he does not recognize in the complainants, or any of
717 them, any legal or equitable title or beneficial ownership thereto, or to any part thereof.

He alleges that Nelson Chase acquired no right, title, or interest by the conveyance of July 29th, 1865, as set out in the bill; and he denies ever' other allegation in the bill in respect to said conveyance.

That on the day of , 1874, the defendant, by leave of the court, filed his supplemental answer to the said bill in the circuit court above mentioned, alleging in substance—

That after the due filing of the said original bill herein, the said jury empaneled on the said second trial of the cause on the common-law side of this court, (wherein this defendant was plaintiff and the said Nelson Chase was defendant, and which cause and the said second trial thereof is mentioned in said bill of complaint,) on or about the twentieth day of March, in the year 1873, rendered their verdict in favor of the said Nelson Chase, on the issue and question whether or not this defendant was the son of said Eliza B. Jumel, and found that he, this defendant, was not such issue, and by the direction of the court, based
718 upon the conveyances put in evidence by the respective parties, and the deed of appointment put in evidence by the defendant in that action, and being the same papers mentioned and set forth in the said bill of complaint herein, they further rendered their additional verdict, by which they have found specially that the said Eliza B. Jumel, at the time of her said death, had no estate or interest in the lands claimed by this defendant in said suit which was descendable to her heirs, to which said direction of the said court and the finding of said additional verdict the said plaintiff's counsel then and there duly excepted.

That on or about the second day of October, in the year last aforesaid, the said Nelson Chase duly perfected his judgment in said last-mentioned cause against this defendant as plaintiff therein, and for his costs in said last-mentioned cause, and that afterwards, and on or about the eighth day of October aforesaid, the defendant duly sued out a writ of error from the Supreme Court of the United States (which was duly allowed and issued) in behalf of this defendant, as plaintiff in error,
719 against the said Nelson Chase, as defendant in error, and the said judgment, record, bill of exceptions, and all other proceedings in said last-mentioned cause, whereby said writ was duly removed to the Supreme Court, in which last-mentioned court the said cause on said writ of error is now pending and undetermined, and that said cause is duly docketted for argument and hearing in said ast-mentioned court, on the record, bill of exceptions, and all other proceedings therein, and that due and proper security was given to make said writ operate as,

and the same is, a supersedeas or stay of proceedings on said judgment, and all proceedings on the part of the said Nelson Chase thereon are duly stayed.

That the said cause came on to be heard before the honorable Samuel Blatchford, judge of the , on or about the day of , 1874, and that after hearing the proofs of the respective parties the said judge rendered his decision thereon.

720 That on the day of June, 1874, a final decree was made and pronounced in the cause, wherein it was in substance adjudged and decreed—

That as between Eliza B. Jumel, deceased, and her heirs, one the one part, and the plaintiffs, Eliza Jumel Pery and William I. Chase, and their assignees, on the other part, the following-named deeds were at the time of their execution, and now are, fraudulent and void, viz: the deed dated January 10th, 1834, from Eliza B. Burr and Michael Werckmeister to Alexander Hamilton; the deed dated October 21st, 1834, from Alexander Hamilton and wife to Michael Werckmeister; the deed dated August 20th, 1842, from Eliza B. Jumel and Michael Werckmeister to Francis Philipon, and the deed dated August 20th, 1842, from Francis Philipon to Eliza B. Jumel.

That, on the death of Eliza B. Jumel, the said Eliza Jumel Pery and William I. Chase became, and they and their assigns now are, entitled, in fee-simple, to all and singular the lands and premises in the bill mentioned, as having formerly belonged to Stephen Jumel, save only

721 the land sold to Messrs. Kingsland and Martin, as described in the bill.

That on the part of Eliza B. Jumel and Michael Werckmeister as against Eliza Jumel Pery and William I. Chase, the two conveyances last named were contrary to equity, and an injury to said two last-named persons; that said two pieces of land at the death of Eliza B. Jumel were of the value of three hundred and five thousand dollars; that Eliza Jumel Pery and William I. Chase are entitled to recover that amount from the representatives of Eliza B. Jumel, provided they have received from her estate property of that value; if not, then to the amount of the value of property so received by them.

That the value of the personal property of Eliza B. Jumel at her death, after payment of any debts, liabilities, or obligations against the same, was $28,624.22.

That all the lands and real estate left by Eliza B. Jumel at her death, and descendable to her heirs, being the land seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly described in the bill, were not at her death of greater value than $68,700.

722 That the value of the said real and personal property, together with the $2,500 received by the defendant from Charles K. Covert, is wholly insufficient to make such compensation as aforesaid.

That the defendant pay to the plaintiff, Nelson Chase, the sum of $2,500, with interest thereon from November 21st, 1872, and the costs of this suit to be taxed.

That the defendant be restrained and enjoined from commencing or prosecuting any suit at law for the recovery of any real or personal estate in the said bill mentioned, or which was of the said Eliza B. Jumel, under pretext of being an heir at law or next of kin of the said Eliza B. Jumel, excepting to proceed to a final decision in the Supreme Court of the United States, upon the writ of error mentioned in the supplemental answer herein.

And this appellant is advised and insists that the said decree is erroneous, inasmuch—

First. As the judge, during the trial, admitted evidence on the part of the complainants which was objected to by the defendant, and which was improper and should have been excluded.

723 Second. As there was no evidence upon which to support the finding that the several deeds named in the decree were fraudulent and void as against Eliza Jumel Pery and William I. Chase.

Third. As the evidence clearly showed the legal and equitable title to the lands described in the first four deeds mentioned in the decree to have been vested in Eliza B. Jumel and her assigns, and she and they had a right and the power to sell and convey the same, and it should have been decreed accordingly.

Fourth. As the evidence failed instead to establish or sustain the finding that, upon the death of Eliza B. Jumel, William I. Chase and Eliza Jumel Pery and their assigns were, and still are, seized in fee-simple of any portion of the land described in the bill.

Fifth. As there was no evidence showing any collusion or co-operation between Eliza B. Jumel and Michael Werckmeister to defraud, wrong, or injure the complainants, or either or any of them.

Sixth. As the finding that the conveyances by Eliza B. Jumel to Ambrose C. Kingsland and Isaac P. Martin, respectively, were, as

724 against Eliza Jumel Pery and William I. Chase, contrary to equity, is entirely unsustained by evidence.

Seventh. As there is no proof sustaining the finding that Eliza Jumel Pery and William I. Chase are entitled to the sum of $305,000, or any other sum or amount, by way of a compensation for wrongs and injuries caused by the acts of Eliza B. Jumel and Michael Werckmeister in making the conveyances above named, or otherwise.

Eighth. As the evidence clearly establishes the fact that Eliza B. Jumel at the time of her death was the owner in fee of all the land described in the bill, excepting that fifthly and sixthly therein described, and that the same was descendable to her heirs, and the finding that only the land therein seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly described was so owned and descendable, is contrary to the evidence, and entirely unsupported thereby.

Ninth. As the finding that the defendant shall pay to the complainant Nelson Chase the sum of $2,500, with interest thereon from No-

725 vember 21st, 1872, is contrary to all rules of equity, unsupported by any evidence, and in opposition to justice or equity.

Tenth. As the defendant is charged with the costs of the suit.

Eleventh. As the granting therein of an injunction against the defendant is wrong and oppressive, preventing the defendant from exercising the right to maintain and establish his legal rights in court, and is not warranted by any evidence in the case; and further, as the same is in direct and open violation of the statutes and legislative enactments of the State of New York, (in which State all of the lands described in the bill are situated,) and the judge granting or making said decree had and has no right, power, or authority to make any decree, or authorize, make, or enter any decree abridging the rights granted by the statutes of the State of New York to the defendant in respect to a second trial of any of the actions brought by him in ejectment.

Twelfth. As the decree did not adjudge and decree that Eliza B. Jumel was seized at her death in fee-simple of all the lands described in the bill, excepting those therein fifthly and sixthly described, and

726 that the same upon her death was descendable to her heirs.

Thirteenth. As the issues in this action had already been tried and passed upon by the circuit court of the United States for the southern district of New York, in an action in which the defendant herein was plaintiff, and Nelson Chase, one of the complainants, was defendant, and judgment entered upon the said issues, which judgment still remains unchanged and unreversed as a judgment of the said circuit court.

Fourteenth. As the circuit court of the United States for the southern district of New York had, in an action upon the issues made in this action, in an action therein tried, in which the defendant herein was plaintiff, and Nelson Chase, one of the complainants herein, was defendant, found, decreed, and determined that by reason of the matters and things set forth in the bill herein, (and which upon said trial proof was offered to sustain,) the said Nelson Chase, as assignee of the complainants herein, Eliza Jumel Pery and William I. Chase, was the legal owner in fee of the lands firstly, secondly, thirdly, and fourthly in the
727 bill herein described; which said decision or judgment still remains unreversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree or mandate to that effect be made, and dismissing this action or suit without costs, or such other decree as to said Supreme Court shall seem just.

Dated New York, June 29th, 1874.

MERRITT E. SAWYER,
Solicitor for Appellant.

L. S. CHATFIELD,
Of Counsel.

(Endorsed:) U. S. circuit court. Nelson Chase & others vs.
728 George W. Bowen. Petition on appeal. Merritt E. Sawyer, solicitor for defendant, 151 Broadway, N. Y.

I hereby allow an appeal in this action in accordance with the prayer of the inclosed petition of appeal.

(Signed) SAML. BLATCHFORD.

JULY 16, 1874.

Filed July 17th, 1874.

729 Supreme Court of the United States.

GEORGE W. BOWEN, APPELLANT,
against
NELSON CHASE, ELIZA JUMEL PERY, AND PAUL R. G. Pery, her husband, and William I. Chase.

Know all men by these presents that we, George W. Bowen, of the city of Providence, in the State of Rhode Island, William H. Bacon, of the city of Providence, in the State of Rhode Island, and John Keefe,

of the city of Providence, in the State of Rhode Island, are held and firmly bound unto Nelson Chase, Eliza Jumel Pery, and Paul R. G. Pery, her husband, and William I. Chase, each of the city of New York, in the State of New York, in the sum of five thousand dollars, lawful money of the United States, to be paid to the said Nelson Chase, Eliza Jumel Pery, and Paul R. G. Pery, her husband, and William I. Chase, their executors or administrators, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators,
730 firmly by these presents, sealed with our seals, dated this tenth day of July, 1874.

Whereas the above-named George W. Bowen hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named George W. Bowen shall prosecute his said appeal to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

GEO. W. BOWEN. [L. S.]
WM. H. BACON. [L. S.]
JOHN KEEFE. [L. S.]

Sealed and delivered in presence of—
WALTER B. VINCENT,
JAMES H. PARSONS.

UNITED STATES OF AMERICA,
District of Rhode Island, ss:

On this eleventh day of July, A. D. 1874, before me, James H. Parsons, a commissioner of the United States for the district of Rhode
731 Island, duly commissioned and sworn as such, and residing in said district, came George W. Bowen, William H. Bacon, and John Keefe, each to me known, and known to me to be the individuals described in and who executed the foregoing bond or undertaking, and who severally acknowledged to me that they executed the same for the uses and purposes therein mentioned.

JAMES H. PARSONS,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Rhode Island, ss:

William H. Bacon, being duly sworn before me, James H. Parsons, a commissioner of the United States for the district of Rhode Island, duly commissioned and sworn as such, and residing in said district, deposes and says that he is one of the subscribers to the foregoing bond or undertaking; that he is a resident of the city of Providence, in the State of Rhode Island; is a freeholder within the said city and State, and is worth the sum of twenty thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

WM. H. BACON.

732 Sworn to before me this 11th day of July, 1874.

JAMES H. PARSONS,
U. S. Commissioner.

UNITED STATES OF AMERICA,
District of Rhode Island, ss:

John Keefe, being duly sworn before me, James H. Parsons, a commissioner of the United States for the district of Rhode Island, duly commissioned and sworn as such, and residing in the said district, deposes and says that he is one of the subscribers to the foregoing bond or undertaking; that he is a resident of the city of Providence, in the State of Rhode Island; is a freeholder within the said city and State, and is worth the sum of twenty thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

JOHN KEEFE,

Sworn to before me this 11th day of July, 1874.

JAMES H. PARSONS,
U. S. Commissioner.

The foregoing bond is approved as to form and amount and the sufficiency of the sureties.

July 16th, 1874.

(Signed) SAM'L BLATCHFORD,
District Judge.

733 (Endorsed:) Supreme Court of the United States. George W. Bowen, appellant, against Nelson Chase & others. Respondents' bond on appeal. Merritt E. Sawyer, solicitor for appellent, 151 Broadway, New York City. Filed July 17, 1874.

734 By the honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, to Nelson Chase, Eliza Jumel Pery, and Paul R. G. Perry, her husband, and William I. Chase:

Whereas George W. Bowen has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you, the said Nelson Chase, Eliza Jumel Pery, and Paul R. G. Pery, her husband, and William I. Chase, and has filed the security required by law: you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, 1874, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 16th day of July, in the year of our Lord one thousand eight hundred and seventy-four.

(Signed) SAM'L BLATCHFORD.

735 (Endorsed:) Supreme Court of the United States. George W. Bowen, appellant, against Nelson Chase & others, respondents. Citation. Merritt E. Sawyer, solicitor for appellant, 151 Broadway, New York.

I hereby admit service of a copy of within citation this 17th day of July, 1874.

JAS. C. CARTER,
Solr. for Complt.

Filed Sept. 28th, 1874.

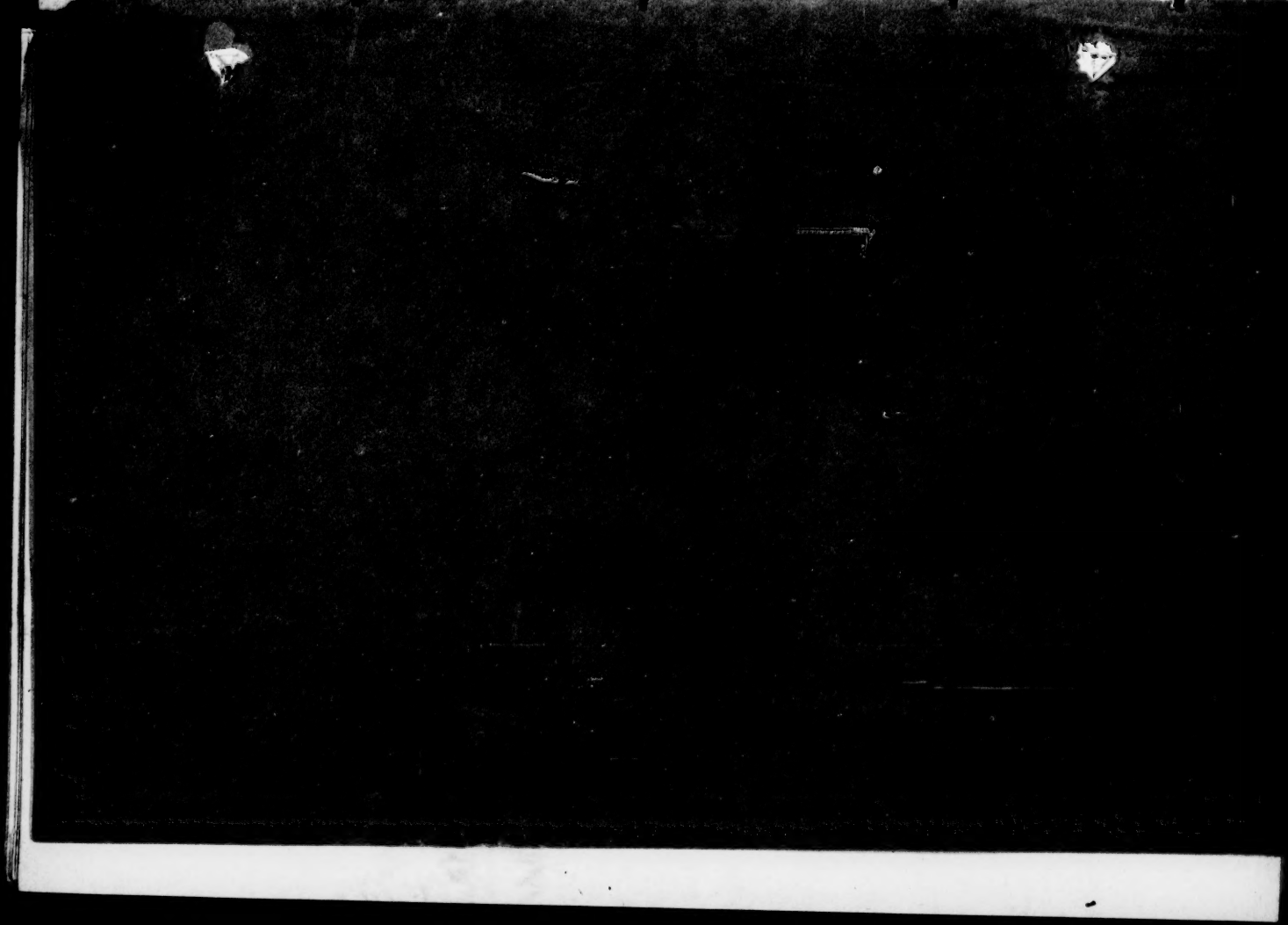
736 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 735, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of George W. Bowen, appellant, against Nelson Chase & others, respondents, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this fourteenth day of October, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE,
Clerk.

(Indorsement on cover:) No. 154. George W. Bowen, appellant, vs. Nelson Chase, Eliza Jumel Pery, and Paul R. G. Pery, her husband, and William I. Chase. S. New York C. C. U. S. Filed 15th October, 1874.



Supreme Court

OF THE UNITED STATES.

No. 154.

GEORGE W. BOWEN,

Appellant,

vs.

NELSON CHASE, ELIZA JUMEL PERY, and PAUL R. G. PERY, her husband, and WILLIAM I. CHASE,

Respondents.

Brief for Appellant.

MERRITT E. SAWYER,

Solicitor for Appellant.

NEW YORK:
BENJ. H. TYRREL, LAW PRINTER, 74 MAIDEN LANE.

1876.

Supreme Court of the United States.

No. 154.

GEORGE W. BOWEN,
Appellant,
vs.
NELSON CHASE, ELIZA JUMEL PERY, and PAUL R. G. PERY, her husband, and WILLIAM I. CHASE,
Respondents.

BRIEF FOR APPELLANT.

This is an appeal from a final decree of the Circuit Court of the United States for the Southern District of New York.

George W. Bowen (the appellant) had brought suit in ejectment in the Circuit Court, against Nelson Chase, one of the appellees, to recover certain lands in the City of New York, claiming that the said lands were owned in fee by Eliza B. Jumel, on the 16th day of July, 1865, when she departed this life, intestate, and that the said lands and premises, by the statutes of the State of New York,

descended to him, said George W. Bowen, her only son and heir-at-law, in fee.

The said Nelson Chase duly appeared and answered. The issues were tried before Mr. Justice Shipman and a jury, and a verdict rendered in favor of the defendant, Nelson Chase.

Thereupon this suit was brought in equity, in the said Circuit Court, by the said Nelson Chase, Eliza Jumel Pery and Paul R. G. Pery, her husband, and William I. Chase (the appellees), against the said George W. Bowen (the appellant), charging in their bill in substance, that on the 9th day of April, 1804, one Stephen Jumel was married at the city of New York, to one Eliza Brown, who was the eafter known as Eliza B. Jumel; that they lived together until the 22d day of May, 1832, when he died, intestate; that Eliza B. Jumel, his wife, survived him, and died at the City of New York, July 9th, 1865, in the 89th year of her age, intestate; that in or about the year 1805, said Jumel and wife adopted as their child a young girl of tender years, whom they afterwards supported and educated, and who, on the 15th day of January, 1832, married Nelson Chase, one of the complainants therein; that said child, afterwards known as Mary Chase, continued to occupy and sustain the position of adopted child as aforesaid until her death, which occurred on the 5th day of May, 1843; that she then left her surviving, her husband, Nelson Chase, and her two children, Eliza Jumel Pery, who was born on the 25th day of March, 1834, and William I. Chase, born August 17th, 1840, her only heirs at law, each of whom are complainants herein; that Eliza B. Jumel, on the death of said Mary Chase, adopted the complainant, William I. Chase, and Eliza Jumel Pery, and maintained and supported them —the former until he was nineteen years of age, and the latter until the time of her marriage; that Stephen Jumel, in his life time, and prior to June 2d, 1815, was possessed and seized in fee of—

First.—All that parcel of land and premises

situate, lying and being in the Second ward of the city of New York, on the northeasterly corner of Broadway and Liberty street, in said city, containing in breadth in front on Broadway twenty-six feet or thereabouts, be it more or less, and in the rear twenty-five feet, more or less, and in length on both sides one hundred and ten feet, bounded in front west by Broadway; east by the ground formerly of the heirs of William De Count, deceased, or their assigns; south by Liberty street, and north by the house and ground formerly in the possession of Richard Tripp Cooper, which formerly belonged to one Lieutenant Buckley, deceased, together with the buildings, tenements, hereditaments and appurtenances therewith belonging, together with one-half of the wall of the house late of the said Buckley, as also a passage-way or alley from the nearest part of such parcel, said alley being four feet in breadth, and is in the rear of such parcel, which alley was formerly a passage leading to a well, as the same was sold and conveyed unto Henry Ludlow by William Ludlow and Mary, his wife, by indenture of lease and release, bearing date the first and second day of November, one thousand seven hundred and forty-seven.

Secondly.—All that other parcel of land situate in the said Second ward, which was conveyed to Stephen Jumel by May Haight and John C. Haight, Benjamin Haight, and Halstead E. Haight, executors of the last will and testament of Benjamin Haight, deceased, formerly of the said city, saddler, by an indenture bearing date the twenty-first day of May, A. D. eighteen hundred and thirteen, and which said last-mentioned parcel of land is described in such conveyance thereof substantially as follows:

All that certain piece or parcel of ground situate, lying, and being in the Third ward of the city of New York, beginning at the northeasterly corner of the said ground, and running thence southerly twenty-three feet or thereabouts; thence westerly

twenty feet; thence northerly fifteen feet or thereabouts; thence easterly six feet; thence northerly eight feet; thence easterly fourteen feet, to the place of beginning, and bounded easterly by ground now or late belonging to one Peter Ogilvie; southerly by ground now or late belonging to the said Stephen Jumel; westerly by ground belonging to the heirs of the said Benjamin Haight, deceased; and northerly partly by ground belonging to the same heirs, and partly by ground now or late belonging to the heirs of one Richard Kipp, deceased, as by annexed map (meaning the map annexed to the said last-mentioned indenture) will more fully appear, together with the buildings, tenements, hereditaments, and appurtenances thereunto belonging.

Thirdly.—All those certain other nine lots or parcels of land and premises situate, lying, and being at Harlem Heights, in the present Twelfth ward, of the said city of New York, and which, taken together are and described as follows: On the north, by lands formerly belonging to Mrs. Bauer, on the west by the then Albany post-road, now called Broadway, on the south by land formerly belonging to George Wear, and on the east by the Harlem River, containing ninety-four acres, three roods, and twenty perches, be the same more or less, being in all, nine lots, respectively numbered six, seven, nine, ten, eleven, twelve, thirteen, fourteen, and fifteen, according to a map entitled, "A map of the estate of Leonard Parkinson, esquire, situate at Harlem Heights, surveyed and laid out into lots by Charles Loss, city surveyor, New York, March 1, 1810."

Fourthly.—All that certain other lot or parcel of ground, on which Eliza B. Jumel resided, and had her homestead at the time of her death, situate, lying, and being in the present Twelfth ward of the said city of New York, bounded and described as

follows: Northwesterly by Tenth avenue, northerly by land formely belonging to George Wear, afterward belonging to Shepherd Knapp, easterly by the Harlem River, southerly by lands formerly belonging to Beekman, and westerly by the said Albany post-road, containing about thirty-two acres, be the same more or less, and being part of lot numbered eight, on the said map so made by said Charles Loss, together with the buildings thereon, and the tenements, hereditaments, and appurtenances thereunto belonging; and,

Fifthly.—All that certain other lot of land and premises situated in the present Twelfth ward of the city of New York, bounded as follows: that is to say, by a line beginning at the then Albany post-road, now called Broadway, at the northeast corner of lot number four, and running north sixty-three degrees, fifteen minutes, west sixteen hundred and ninty feet to the North or Hudson River, thence north forty-five degrees, west three hundred feet, north twenty-four degrees, twenty-five minutes, west two hundred and ninety feet, north fifteen degrees, east two hundred and ten feet, north fifty degrees forty-five minutes west ninety-one feet, north fifteen degrees thirty minutes east one hundred and eighty-three feet, to the land now or formerly of Arden's; thence south seventy-one degrees thirty minutes east along Arden's line two thousand one hundred and sixty feet, to the said Albany post-road, and northeast corner of lot number five; thence along the same road south fifteen degrees west four hundred and sixty-seven feet, south nine degrees west two hundred and eighty-one feet, south twelve degrees west two hundred and fifty-eight feet, to the place of beginning, containing thirty-nine acres one rood, and bounded on the north by said Arden's land, on the west by the said North or Hudson River, on the south by the said lot numbered four, and on the east by the said Albany post road, and numbered five, on the said map made by Charles Loss.

That at that time the said Stephen Jumel lived upon the parcel of ground thirdly above described, until his death, his family consisting of his wife and adopted daughter, until the marriage of the latter with the complainant, Nelson Chase, after which he also formed a part of said family; that after the death of Stephen Jumel, Eliza B. Jumel, his widow, Nelson Chase, and his wife Mary, Mary Jumel Pery, and Walter I. Chase, whilst respectively in life, dwelt together as one family; that by conveyances made prior to December 11th, 1827, the lands firstly, secondly, thirdly, and fifthly above described, became vested in Mary Chase, by her then maiden name of Mary Jumel Bownes aforesaid, in fee-simple; that on the last-named day she conveyed to Michael Werckmeister the lands firstly, secondly, and fifthly above described, in trust; that, prior to May 13th, 1828, the lot of land hereinbefore described, and known as lot eight upon Loss' map before mentioned, became vested in fee by conveyance in Mary Chase, by her then maiden name of Mary Jumel Bownes; that on the day last named she conveyed the same to the said Michael Werckmeister, upon the same trusts as in the last-named deed of December 11th, 1827; that on the 21st day of November, 1828, Eliza B. Jumel, the beneficiary named in said trust-deed, by an instrument in writing executed in the manner provided in the said trusts, and in pursuance of the power given her in and by said trusts, did order, limit, and appoint that, immediately after her death, the aforesaid Michael Werckmeister should grant and convey all the lands described in said trust-deed bearing date December 11th, 1827, to such persons as she should by will direct; in default of will, then to her husband for life, with an annuity of $600 to Mary Jumel Bownes; and, on his death, or in case he should not survive his wife, then immediately upon her death, to Mary Jumel Bownes and her heirs in fee; that at or before the making of the said last-named instrument, the lands thirdly above

described were in due form of law settled legally or beneficially to the benefit of said Mary Jumel Chase and her heirs in fee, substantially in like manner as in said last-named instrument specified; that Michael Werckmeister died before the death of Eliza B. Jumel, and without leaving any heir competent to take lands from him; that after the death of Stephen Jumel, Eliza B. Jumel acquired title in fee to—

Seventhly.—All that certain parcel of land, situate, lying, and being in the Twenty-second ward of the said city of New York, bounded and described as follows: Commencing at a corner formed by the intersection of the northerly line of forty-first street with the westerly line of the Seventh avenue, running thence northerly along the westerly line of the Seventh avenue nineteen feet nine inches; thence westerly and parallel with Forty-first street, sixty feet; thence southerly and parallel with Seventh avenue, nineteen feet nine inches to the northerly line of Forty-first street; thence easterly along said last-mentioned line sixty feet to the place of beginning, together with the buildings thereon, and the tenements, hereditaments, and appurtenances thereunto belonging.

Eighthly.—All that certain dwelling-house and parcel of land situate, lying, and being in the Twenty-second ward of the city of New York, bounded and described as follow: Beginning at a point on the westerly side of Seventh avenue, distance nineteen feet and nine inches northerly from the northerly side of Forty-first street, and running thence northerly along the westerly side of Seventh avenue nineteen feet and nine inches; and thence westerly and parallel with Forty-first street sixty-feet to Seventh avenue, at the place of beginning, together with the buildings thereon, and the tenements, hereditaments, and appurtenances thereunto belonging.

Ninthly. All that certain farm situate in the town of Saratoga Springs, in the County of Sara-

toga and State of New York, containing one hundred and sixty-two acres one rood and thirty-two perches of land, and more particularly described in a certain deed of conveyance thereof, bearing date the third day of September, one thousand eight hundred and thirty-six, made by Isaac Taylor and Betsy, his wife, to the said Eliza B. Jumel.

Tenthly. All that certain other farm situate, lying and being in the said town of Saratoga Springs, containing fifty-five acres and a half acre of land, and more particularly described in a certain deed of conveyance thereof, bearing date the twenty-ninth day of August, one thousand eight hundred and thirty-six, made by William L. F. Warren and Eliza, his wife, to the said Eliza B. Jumel.

Eleventhly. All that certain other parcel of land, situate on the westerly side of Circular street, in the said village of Saratoga Springs, and more particularly described in a certain deed of conveyance thereof, bearing date the sixteenth day of September, one thousand eight hundred and fifty-one, made by John Hogman and Zilpha Hogman, his wife, to the said Eliza B. Jumel.

Twelfthly. All that certain parcel of land in the said village of Saratoga Springs, (and being a part of a farm called the Sadler farm), containing five acres of land, and more particularly described in a certain indenture, bearing date the eleventh day of November, one thousand eight hundred and thirty-five, made by William L. F. Warren and Eliza, his wife, of the first part, and William Lord, Jr., and Charles J. Stearns, of the second part.

Thirteenthly. All that certain lot of land situate in the said village of Saratoga Springs (and being a part of a farm called the Sadler farm), and containing ten acres one rood and twenty-seven perches of land, and more particularly described in a certain indenture, bearing date the tenth day of March, one thousand eight hundred and thirty-six, made between William L. F. Warren and Eliza, his wife, and Marvin Holden, of the second part; and

Fourteenthly. All that certain other lot of land situate in the said village of Saratoga Springs (and being a part of a farm called the Sadler farm), containing nine acres three roods and sixteen perches of land, and more particularly described in a certain indenture, bearing date the twelfth day of March, one thousand eight hundred and thirty-six, made between William L. F. Warren and Eliza, his wife, of the first part, and Eliza Hull, of the second part.

That Eliza B. Jumel died seized and possessed of of all said lands, seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly and fourteenthly above described; that, on April 15th, 1850, Eliza P. Jumel, fraudulently, and in violation of the aforesaid trust and appointment, conveyed to Ambrose C. Kingsland the land fifthly above described, and on March 1st, 1833, the said Eliza B. Jumel, by a like fraudulent deed, conveyed to Isaac P. Martin "all and singular that triangular piece or parcel of land situate in the Twentieth ward of the city of New York, bounded as follows: On the east by the Tenth avenue, on the north by land now or late of Shepherd Knapp, formerly Wear's land, and at one time known as the Cross Keys property; and on the west by the Kingsbrid'e road, containing about three acres more or less," being a part of lot eight on Loss' map hereinbefore mentioned; that, for and by reason of said two fraudulent conveyances, the said Eliza B. Jumel, and at her death her real and personal representatives, were bound to make restitution therefor to Eliza Jumel Pery and William I. Chase, which liability still continues, and is included in the conveyance by them to the complainant, Nelson Chase, hereinafter mentioned; that, by reason of and relying upon certain false and fraudulent representations made by Eliza B. Jumel to Eliza Jumel Chase (now Pery), Paul R. G. Pery, complainant, and John Edward Pery, the father of said Paul R. G. Pery, in that she, Eliza B. Jumel, was worth

two millions of dollars, and that she intended, at her death, to secure one-half of it to Eliza Jumel Chase, in case she remained loving and dutiful towards her; and, further, in case the said persons should consent to and cause a marriage to be solemnized between two of said persons, namely, Paul R. G. Pery and Eliza Jumel Chase, that she, from that day, would and did destine to and for the said Eliza Jumel Chase, not only one-half of her property, but that the same should be increased in case the said marriage should be a happy one, and said Eliza Jumel Chase should remain dutiful, &c., as aforesaid; that said marriage was a happy one, and said Eliza Jumel Chase did remain dutiful, &c., as aforesaid; but that the said Eliza B. Jumel did not perform her part of said contract, and that the representations before mentioned were false, in that the property of said Eliza B. Jumel did not at any time exceed one million of dollars in value; by reason of which said Eliza Jumel Chase (now Pery), upon the death of said Eliza B. Jumel, was well entitled to all the estate, real and personal, of the said Eliza B. Jumel, or left by her, and that to the exclusion of any heirs, next of kin, devisees, or legatees of the said Eliza B. Jumel; and, further, that by reason of said false and fraudulent representations, the said Eliza Jumel Perry was entitled to recover from said Eliza B Jumel, or her legal representatives, one million dollars as compensation for her damage suffered by reason of such false and fraudulent representations; that Eliza B. Jumel, at her death, left a paper-writing, purporting to be a will, which was, in an action for that purpose brought by the complainant, Nelson Chase and others, against the executors therein named, in the Supreme Court of the State of New York, adjudged by said court to be invalid as a will; that William B. Jones, Stephen Jumel Jones, Eliza Jumel Tranchell and Louise Jumel Maddox, the nephews and nieces and only legitimate heirs at law of Eliza B. Jumel, on the 29th day of July,

1865, conveyed to the complainant, Nelson Chase, all their share and interest in the property, real and personal, of which the aforesaid Eliza B. Jumel died seized or possessed; that, on the 12th day of October, 1865, a family settlement was made between the complainants, Nelson Chase, William I. Chase, and Eliza Jumel Pery, whereby all claims and demands of the said William I. Chase and Eliza Jumel Pery against the estate of Eliza B. Jumel, and all their interests therein, were conveyed to the said Nelson Chase, upon certain trusts therein mentioned; that at her death Eliza B. Jumel was not in equity or otherwise, or at law, for her own use or benefit, seized or possessed or otherwise entitled to any lands, tenements, hereditaments, or real estate, or effects which could pass by descent or inheritance or otherwise, by act or operation of law, to any heir, or heirs of her, the said Eliza B. Jumel, deceased, or which in any way at law or in equity could be charged or made chargeable for any debt, liability, or duty of the said Eliza B. Jumel, or for any claim or demand against her or her estate, save and except only the lands and premises, with their appurtenances, seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly and fourteenthly hereinabove described.

That on the 22d day of November, 1866, letters of administration upon the estate of Eliza B. Jumel were duly granted to William C. Wetmore and William B. Jones, and that said administrators paid all debts, claims, due or owing by her, excepting the claims of William I. Chase and Eliza Jumel Pery, herein mentioned.

That the property of Eliza B. Jumel, at the time of her death, was not of sufficient value to pay the claims against her estate of the complainants, William I. Chase and Eliza Jumel Pery, as herein alleged and particularly set forth.

That on the 20th day of August, 1842, there were simultaneously executed two deeds, purporting to

convey the premises firstly, secondly, and thirdly above described, one being by Eliza B. Jumel, of the first part, Michael Werckmeister, of the second part, and Francis Phillipon, of the third part, and the other by Francis Phillipon of the first part, and Eliza B. Jumel, of the second part; that no consideration was paid by or on behalf of either of the grantees named in said deeds, and that such deeds were and are fraudulent and void, as to the complainants William I. Chase and Eliza Jumel Pery.

That on the 10th day of January, 1834, a deed was executed by Eliza B. Jumel and Michael Werckmeister to Alexander Hamilton, of the land thirdly above described, and on the 21st day of October, 1834, the said Alexander Hamilton executed a deed of the said premises to Michael Werckmeister in trust, and that both such deeds are fraudulent and void as to the complainants.

That Eliza B. Jumel, at the time of her marriage with Stephen Jumel, had little or no property, and that after that she never had any intercourse with any of her relatives by blood or affinity, excepting her sister Maria Jones, now deceased.

That the defendant claims to be the illegitimate son of Eliza B. Jumel, and has instituted several suits or actions at law against the complainant Nelson Chase, to recover the whole of the lands hereinbefore described, some of which actions are still pending and undetermined.

That the issues made by said actions and claims of the defendant are of no substantial importance, inasmuch as he would be bound, in compliance with the trusts hereinbefore set forth, to grant and convey in fee-simple to the complainants, Eliza Jumel Pery and William I. Chase, or to their grantee, Nelson Chase, all the interest or estate that should be held to have come to him by inheritance from the said Eliza B. Jumel, in and to all and singular the lands conveyed by said Mary Jumel Chase, as hereinbefore set forth, to Michael Werckmeister; and also to apply all other estate,

real or personal, which might have come to him from Eliza B. Jumel, as her heir at law or next of kin, towards satisfaction of the claims of William I. Chase and Eliza Jumel Pery herein set forth.

That it is claimed by the defendant that, at law, the technical, legal estate in the lands granted to Michael Werckmeister, as herein set forth, is vested in the said defendant, and that even, though the complainants, or some of them, be the equitable owners thereof, he is still entitled to recover the same at law in the actions in which he is plaintiff, before mentioned ; and that the claims of the complainants, William I. Chase and Eliza Jumel Pery, herein set forth, are only enforcible in equity.

That on November 21st, 1872, one Charles Covert was in possession of the premises seventhly and eighthly herein described, under a conveyance theretofore made to him by the complainant Nelson Chase, and that on the day last named the defendant did falsely and fraudulently take an undue advantage of said Covert, and by means of his pretended claim to said land did procure said Covert to pay him $2,500 for a formal conveyance of his interest therein ; that said Covert paid the same with a full notice and conviction of the invalidity of said defendant's claim, and therefore has no claim upon the complainants to recover the same back, but that complainants are entitled to recover the same from the defendant in part satisfaction of their claims against the estate of Eliza B. Jumel.

The defendant, the appellant, answered the said bill, setting up, in substance, that he admits the marriage of Stephen Jumel then a woman called Eliza Brown in the complaint, but whose real name was Eliza or Betsy Bowen, until about the time of said marriage, when she assumed, or in some manner unknown to defendant, took the name of Eliza Brown.

That he admits that said Jumel lived with his said wife, but not continuously, until his death.

He admits the death of Eliza B. Jumel, as therein stated.

He denies the adoption of the child called Mary Jumel Chase, by Stephen Jumel and wife, or that they took said child under their protection or support, or that she married Nelson Chase with their consent, or that they invited said Chase and wife to their house.

He admits that said Chase and wife were supported at intervals by said Jumel's wife, and otherwise greatly assisted by her, without the concurrence of the said Jumel.

He denies that said Mary Jumel Chase, after her marriage and until her death, continued to be recognized by said Jumel and wife as their adopted daughter.

He avers that said Mary, at or about the time of her marriage, assumed or added to her name the word "Jumel."

He admits that she left her surviving the persons named in the complaint, born at the time therein alleged.

He denies that Eliza B. Jumel assumed guardianship and control of Eliza Jumel Pery and William I. Chase, as her adopted grandchildren, but admits that they were harbored by her, and were supported and educated by her as beneficiaries, but not as adopted grandchildren or wards.

He admits the ownership by Stephen Jumel of the lands firstly, secondly, thirdly, fourthly, fifthly, and sixthly above described, and that he occupied as a home the portion thereof alleged in the complaint to have been so occupied by him, and that, after his death, they were occupied by, and were in the possession of, Eliza B. Jumel until her death.

He admits the conveyance by Stephen Jumel to Mary Jumel Bownes, and by Mary Jumel Bownes to Michael Werckmeister, of the lands firstly, secondly, thirdly, fourthly, fifthly, and sixthly described in the bill of complaint, which conveyances were

for the sole use and benefit of Eliza B. Jumel and her heirs, and were made with the intent and for the purpose of passing the title in fee-simple absolutely to the said Eliza B. Jumel and her heirs, and he denies each and every other allegation in said complaint in reference to said conveyances.

He admits that on the 21st day of November, 1828, said Eliza B. Jumel did execute a paper-writing, but denies that it contained the provisions or was of the force or effect in said complaint alleged; and alleges that it ceased to be of any force or effect after the conveyance by Michael Werckmeister and Eliza B. Jumel to Phillipon.

He denies all other allegations in said complaint in reference to said paper writing.

And also further denies that all part or any part of the said lands "thirdly described" in said bill were, at or before the making of said alleged deed of appointment, in due form of law settled legally or beneficially to the benefit of said Mary Jumel Chase, or to her heirs, in fee or otherwise, but he admits that the said Michael Werckmeister died without issue before said Eliza B. Jumel departed this life.

He admits that all and singular the lands and real estate, with the appurtenances mentioned and described in the complainant's said bill of complaint, (except the said land in the county of Saratoga, and the said lands seventhly and eighthly described in said bill,) were in the years 1827 and 1828, or thereabouts, duly vested in Michael Werckmeister, mentioned in said bill of complaint, in trust for the sole and exclusive use, benefit, and advantage of the said Eliza B. Jumel, and for the sole and exclusive use and benefit of her heirs-at-law forever, and that the said Eliza B. Jumel had, by the terms of the said trust, sole and exclusive power and authority, to sell the same in fee, and to direct the said trustee to convey the same to such person or persons as should thereafter purchase the same of the said Eliza B. Jumel, and that by the

terms of said trust the said Eliza B. Jumel, the sole donee therein named, had no power, right, or authority to direct or appoint the disposition of said property after her death, and that the said paper designated by the plaintiffs in their said bill of complaint as a deed or instrument of appointment, was, at the time of the execution thereof, and at all times thereafter, inoperative and void, and ineffectual in law to convey any title to said land and real estate, or any interest therein, as will more fully appear by reference to said trust deed and said instrument of appointment, reference being thereto had.

That the said Michael Werckmeister departed this life in or about the month of October, in the year eighteen hundred and forty six, and thereupon the said Eliza B. Jumel, by virtue of the various statutes of the said State of New York, then in force, and especially by virtue of the provisions of article two, chapter one, title two, of the revised statutes of said State, entitled "Of uses and trusts," not only became confirmed in her aforesaid title, but she thereupon became the owner in fee of all and singular the said lands and real estate mentioned and described in said bill, (excepting therefrom as aforesaid.)

He admits that Eliza B. Jumel, after the death of Stephen Jumel, acquired the lands seventhly, eighthly, ninthly tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly, described in the bill, and that she died seized and possessed of all of them.

He avers that he never made and never intended to make, any claim to the lands conveyed to Ambrose C. Kingsland and Isaac P. Martin; and further, that Eliza B. Jumel, at the time of making such conveyances, was the sole owner in fee of said lands, with full power to convey the same.

He denies that she fraudulently conveyed the same, and denies all allegations of fraud in said bill as to said conveyances.

He avers that at the time of such conveyances

said lands were unincumbered, and were not subject to any trust-deed or paper writing whatever; and denies that, by reason of said conveyances, either the said Eliza B. Jumel, at her death, or her real or personal representatives, were or are bound to make any such restitution as is claimed in the bill.

He admits the alleged marriage between Paul R. G. Pery and Eliza Jumel Chase, but denies the making of any agreement or treaty of marriage, as is alleged in the bill.

He denies all the allegations in said bill as to the representations of Eliza B. Jumel, as to the value of her property and her intentions in relation thereto, and also her promises in relation thereto, and every allegation in respect to the aforesaid treaty of marriage and representations and promises by said Eliza B. Jumel.

He denies that Eliza B. Jumel knowingly or wilfully made any false or fraudulent representations, as set forth in the bill, or that they were confided in, or relied or acted upon, as therein alleged.

He denies that Eliza Jumel Pery was happy in her marriage, nor was she dutiful and affectionate towards Eliza B. Jumel.

He alleges that Eliza B. Jumel made suitable provision for Eliza Jumel Pery, and denies that she, said Eliza Jumel Pery, was, on the death of Eliza B. Jumel, to receive any sum whatever from the real or personal representatives of said Eliza B. Jumel.

He denies that William B. Jones, Stephen Jume Jones, Eliza Jumel Tranchell, and Louisa Jumel Maddox were the nephews and neices of Eliza B. Jumel; nor were they or William I. Chase, Eliza Jumel Pery, or any of them, heirs-at-law of Eliza B. Jumel.

He denies the making of the alleged deed from said William B. Jones, Stephen Jumel Jones, Eliza Jumel Tranchell, and Louisa Jumel Maddox to Nelson Chase, as alleged in the bill.

He denies the making of the family agreement set forth in the bill, and avers that all instruments made by the last above-named parties, or by any of the complainants herein, were made to cheat and defraud the defendant, and are void as against him.

He avers that Eliza B. Jumel died seized in fee of all the lands described in the complaint, excepting the two pieces conveyed to Ambrose C. Kingsland and Isaac P. Martin.

He denies all and singular the statements and allegations in said bill as to the value of the estate of Eliza B. Jumel at her death, and that the same was not sufficient to pay the demands of William I. Chase and Eliza Jumel Pery.

He admits the making of the deed by Eliza B. Jumel and Michael Werckmeister to Francis Phillipon, and the deed by Francis Phillipon to Eliza B. Jumel, and avers that thereby and by the death of Michael Werckmeister, Eliza B. Jumel became the absolute owner in fee of all the lands therein described.

He denies all the allegations of the complaint in repect to said conveyance, excepting as above stated.

He admits the making of the deed by Eliza B. Jumel and Michael Werckmeister to Alexander Hamilton, and the deed by Alexander Hamilton to Michael Werckmeister, and he denies every allegation in said bill contained in respect to said two conveyances, excepting as above admitted.

He denies that Maria Jones is or was the sister, or a relative by blood, of Eliza B. Jumel, or that she ever had any intercourse with said Maria Jones or other relative by blood, excepting the defendant.

He admits that he claims to be the son and only child of Eliza B. Jumel, and that he has commenced actions against the complainant, Nelson Chase, to recover the lands described in the bill, he being

wrongfully in possession thereof, some of which actions are pending.

He alleges that he was born on the 9th day of October, 1794, at Providence, R. I., of the body of Eliza B. Jumel, then known as Betsy Bowen.

He denies that the only material issue which has been raised, or which is capable of being raised, in the actions by the defendant against the complainant, Nelson Chase, is whether he, the defendant, is the son born of the body of Eliza B. Jumel; but on the contrary, he avers that every issue raised, or which can be raised, under the bill herein, have each and all been raised, heard, and determined upon the trial of the actions aforesaid, as alleged in the bill herein.

He denies the allegation in the bill that the issue above named is of no substantial importance or pecuniary consequence as between the parties hereto, for the reasons therein stated.

He alleges that he is the owner in fee of all the lands described in the bill herein, excepting that portion thereof sold to Messrs. Kingsland and Martin, and he does not recognize in the complainants, or any of them, any legal or equitable title to the beneficial ownership thereof, or to any part thereof.

He alleges that Nelson Chase acquired no right, title, or interest by the conveyance of July 29th, 1865, as set out in the bill; and he denies every other allegation in the bill in respect to said conveyance.

The defendant, by leave of the Court, filed his supplemental answer to the said bill in the Circuit Court above mentioned, alleging in substance—

That after the due filing of the said original bill herein, the said jury, empaneled on the said second trial of the cause on the common-law side of this Court, (wherein this defendant was plaintiff and the said Nelson Chase was defendant, and which cause and the said second trial thereof is mentioned in said bill of complaint,) on or about the twentieth day of March, in the year 1873, rendered

their verdict in favor of the said Nelson Chase, on the issue and question whether or not this defendant was the son of said Eliza B. Jumel, and found that he, this defendant, was not such issue, and, by the direction of the Court, based upon the conveyances put in evidence by the respective parties, and the deed of appointment put in evidence by the defendant in that action, [and being the same papers mentioned and set forth in the said bill of complaint herein,] they further rendered their additional verdict, by which they have found specially that the said Eliza B. Jumel, at the time of her said death, had no estate or interest in the lands claimed by this defendant in said suit which was descendable to her heirs, to which said direction of the said Court, and the finding of said additional verdict, the said plaintiff's counsel then and there duly excepted.

That, on or about the second day of October, in the year last aforesaid, the said Nelson Chase duly perfected his judgment in said last mentioned cause against this defendant as plaintiff therein, and for his costs in said last mentioned cause, and that, afterwards, and on or about the eighth day of October aforesaid, the defendant duly sued out a writ of error from the Supreme Court of the United States (which was duly allowed and issued in behalf of this defendant, as plaintiff in error, against the said Nelson Chase, as defendant in error,) and the said judgment, record, bill of exceptions, and all other proceedings in said last mentioned cause, were by said writ duly removed to the Supreme Court, in which last mentioned Court the said cause on said writ of error is now pending and undetermined, and that said cause is duly docketed for argument and hearing in said last mentioned Court, on the record, bill of exceptions, and all other proceedings herein; and that due and proper security was given to make said writ operate as, and the same is, a supersedeas, or stay of

proceedings on said judgment, and all proceedings on the part of the said Nelson Chase thereon are duly stayed.

Replication was duly filed; and thereupon the proofs of the respective parties were taken and upon pleadings and proofs, and it was decreed by the Court substantially as follows:

That as between Eliza B. Jumel, deceased, and her heirs, on the one part, and the plaintiffs, Eliza Jumel Pery and William I. Chase, and their assignees, on the other part, the following named deeds were, at the time of their execution, and now are, fraudulent and void, viz: the deed dated January 10th, 1834, from Eliza B. Burr and Michael Werckmeister to Alexander Hamilton; the deed dated October 31st, 1834, from Alexander Hamilton and wife to Michael Werckmeister; the deed dated August 20th, 1842, from Eliza B. Jumel and Michael Werckmeister to Francis Phillipon, and the deed dated August 20th, 1842, from Francis Phillipon to Eliza B. Jumel.

That, on the death of Eliza B. Jumel, the said Eliza Jumel Perry and William I. Chase, became, and they and their assigns now are, entitled, in fee simple, to all and singular the lands and premises in the bill mentioned, as having formerly belonged to Stephen Jumel; save only the land sold to Messrs. Kingsland and Martin, as described in the bill.

That, on the part of Eliza B. Jumel and Michael Werckmeister as against Eliza Jumel Pery and William I. Chase, the two conveyances last named were contrary to equity, and an injury to said two last named persons; that said two pieces of land at the death of Eliza B. Jumel were of the value of three hundred and five thousand dollars; that Eliza Jumel Pery and William I. Chase are entitled to recover that amount from the representatives of Eliza B. Jumel, provided they have received from her estate property of that value; if not, then to the

amount of the value of property so received by them.

That the value of the personal property of Eliza B. Jumel at her death, after payment of any debts, liabilities, or obligations against the same, was $28,624.22.

That all the lands and real estate left by Eliza B. Jumel at her death, and descendable to her heirs, being the land seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and fourteenthly described in the bill, were not at her death of greater value than $68,700.

That the value of the said real and personal property, together with the $2,500 received by the defendant from Charles Covert, is wholly insufficient to make such compensation as aforesaid.

That the defendant pay to the plaintiff, Nelson Chase, the sum of $2,500, with interest thereon from November 21st, 1872, and the costs of this suit to be taxed.

That the defendant be restrained and enjoined from commencing or prosecuting any suit at law for the recovery of any real or personal estate in the said bill mentioned, or which was of the said Eliza B. Jumel, under pretext of being an heir at law or next of kin of the said Eliza B. Jumel, excepting to proceed to a final decision in the Supreme Court of the United States, upon the writ of error mentioned in the supplemental answer herein. From which decree this appeal was taken.

The errors as signed by the appellant are, as follows.

First Error.

That the Circuit Court erred in decreeing on the proofs that, as between Eliza B. Jumel, deceased, and her heirs on the one part, and the appellees, Eliza Jumel Pery and William I. Chase on the other part, the four deeds, viz: the deed from

Burr and Werckmeister, to Hamilton; the deed from Hamilton and wife, to Werckmeister; the deed from Jumel and Werckmeister, to Phillipon, and the deed from Phillipon to Jumel, more particularly described in the decree, were fraudulent and void at the time of their execution.

Second Error.

That the Circuit Court erred in decreeing on the proofs, that, on the death of Eliza B. Jumel, the said Eliza Jumel Pery and William I. Chase, became, and they and their assigns now are, entitled in fee-simple to all and singular the lands and premises in the bill mentioned, as having formerly belonged to Stephen Jumel, save only the land sold to Messrs. Kingsland and Martin, as described in the bill.

Third Error.

That the Circuit Court erred in decreeing on the proofs, that, on the part of Eliza B. Jumel and Michael Werckmeister, as against Eliza Jumel Pery and William I. Chase, the two conveyances last named were contrary to equity, and an injury to said two last named persons; that said two pieces of land at the death of Eliza B. Jumel, were of the value of three hundred and five thousand dollars; that Eliza Jumel Pery and William I. Chase, are entitled to recover that amount from the representatives of Eliza B. Jumel, provided they have received from her estate property of that value; if not, then to the amount of the value of property so received by them.

Fourth Error.

That the Circuit Court erred in decreeing on the proofs, that all the lands and real estate left by Eliza B. Jumel at her death, and descendible to her heirs, being the lands, seventhly, eighthly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly, and

fourteenthly described in the bill, were not at her death, of greater value than $68,700.

Fifth Error.

That the Circuit Court erred in decreeing on the proofs, that the value of the said real and personal property, together with the $2,500, received by the appellant's, from Charles K. Covert, is wholly insufficient to make such compensation as aforesaid.

Sixth Error.

That the Circuit Court erred in decreeing on the proofs, that the appellant pay to the appellee, Nelson Chase, the sum of $2,500, with interest thereon from November 21 st, 1872, and the costs of this suit to be taxed.

Seventh Error.

That the said Circuit Court erred in decreeing on the proofs—

That the appellant be restrained and enjoined from commencing or prosecuting any suit at law for the recovery of any real or personal estate in the said bill mentioned, or which was of the said Eliza B. Jumel, under pretext of being an heir at law or next of kin of the said Eliza B. Jumel, excepting to proceed to a final decision in the Supreme Court of the United States, upon the writ of error mentioned in the supplemental answer herein.

Eighth Error.

That the said Circuit Court erred in not adjudging and decreeing that the legal and equitable title to the lands in question were, at the time of the death of Eliza B. Jumel, vested in her in fee-simple absolute, and at her death descended to her heirs.

Ninth Error.

That the said Circuit Court erred, in not adjudging and decreeing that the appellees never had any right or interest whatever in the lots 7, 9, 10, 11, 12, 13, 14 and 15, particularly described in the bill herein, and that there was no proof whatever, showing even a pretense or shadow of a claim to the said lands, so far as the appellees, or either of them were concerned.

Tenth Error.

That the said Circuit Court erred in adjudging, that all the lands and real estate left by Eliza B. Jumel at her death, and descendible to her heirs, was the land seventhly, eightly, ninthly, tenthly, eleventhly, twelfthly, thirteenthly and fourteenthly described in the bill; and in not adjudging that a portion, at least, of the lands in the said bill thirdly described, to wit, lots 7, 9, 10, 11, 12, 13, 14 and 15, were also left by the said Eliza B. Jumel at her death and were descendible to her heirs.

Eleventh Error.

That the said Circuit Court erred in allowing or granting the injunction, as there is evidence which clearly shows that the appellees now hold property of the appellant of far greater value than any claim they can possibly have against him.

Twelfth Error.

That the said Circuit Court erred in not dismissing the bill, with costs.

Thirteenth Error,

That the Circuit Court erred in decreeing that the value of the property conveyed to Messrs. Kingsland and Martin was $305,000; whereas there was no proof showing it to be of greater value than $284,000.

As there are several distinct pieces of property affected by this suit, and many deeds in evidence, some affecting one of said pieces of property and some others, it has been deemed advisable to make a memorandum of said deeds for the convenience of the Court.

The different parcels of land are briefly as follows:

Lots numbers 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 on Washington Heights, in the city of New York; the lot on the corner of Broadway and Liberty street in said city; the lot in Liberty street in said city. The deeds affecting them are as follows:

FIRST.—LOT FIVE.

1. Deed, S. Jumel and wife to Mary Jumel Bownes, dated July 30, 1827. See page 94.
2. Deed of Trust, Bownes to Werckmeister, dated Dec. 11, 1827. See page 55.
3. Appointment by Eliza B. Jumel, dated Nov. 21, 1828. See page 95.
4. Deed, Werckmeister and Eliza B. Jumel to Phillipon, dated Aug. 20, 1842. See page 77.
5. Deed, Phillipon to Eliza B. Jumel, dated Aug. 20, 1842. See page 81.
6. Deed, Eliza B. Jumel to Kingsland, dated April 15, 1850. See page 145.

SECOND.—LOT SIX.

1. Deed, S. Jumel and wife to Mary Jumel Bownes, dated July 30, 1827. See page 53.
2. Deed of Trust, Bownes to Werckmeister, dated Dec. 11, 1827. See page 56.
3. Appointment by Eliza B. Jumel, dated Nov. 21, 1828. See page 95.
4. Deed, Werckmeister to Hamilton, dated Jan. 10, 1834. See page 88.
5. Deed, Hamilton to Werckmeister, dated Oct. 21, 1834. See page 91.

6. Deed, Werckmeister and Eliza B. Jumel to Phillipon, dated Aug. 20, 1842. See page 77.
7. Deed, Phillipon to Eliza B. Jumel, dated Aug. 20, 1842. See page 81.

THIRD.—LOT EIGHT.

1. Deed, S. Jumel to Desobry, dated June 3, 1815. See page 59.
2. Deed, Desobry and Jumel to Berger and Skiddy, dated Jan. 13, 1825. See page 62.
3. Deed, Berger and Skiddy to Bownes, dated Jan. 1, 1828. See page 65.
4. Deed of Trust, Bownes to Werckmeister, dated May 13, 1828. See page 67.
5. Appointment by Eliza B. Jumel, dated Nov. 1, 1828. See page 95.

FOURTH.—LOTS 7, 9, 10, 11, 12, 13, 14 and 15.

1. Deed, Werckmeister to Hamilton, dated Jan. 10, 1834. See page 88.
2. Deed, Hamilton to Werckmeister, dated Oct. 21, 1834. See page 91.
3. Deed, Werckmeister to Phillipon, dated Aug. 20, 1842. See page 77.
4. Deed, Phillipon to Eliza B. Jumel, dated Aug. 20, 1842. See page 81.

FIFTH.—LOT CORNER BROADWAY AND LIBERTY STREET, AND THE LOT IN LIBERTY STREET.

1. Deed, S Jumel and wife to Macy, dated Jan. 18 1826. See page
2. Deed, Macy and Jumel and wife to Bownes, dated Nov. 24, 1827. See page 73.
3. Deed of Trust, Bownes to Werckmeister, dated Dec. 11, 1827. See page 56.
4. Appointment by Eliza B. Jumel, dated Nov. 1, 1828. See page 95.

5. Deed, Werckmeister to Phillipon, dated Aug. 20, 1842. See page 77.
6. Deed, Phillipon to Eliza B. Jumel, dated Aug. 20, 1842. See page 81.

The four deeds decreed to be fraudulent and void are as follows: 1st. one between Eliza Burr (late Eliza B. Jumel) of the first part. Michael Werckmeister, of the second part, and Alexander Hamilton, of the third part, dated January 10th, 1834, covering lots 6, 7, 9, 10, 11, 12, 13, 14 and 15. 2d. One dated Oct. 21st, 1834, between Alexander Hamilton, and wife, of the first part and Michael Werckmeister, of the second part, covering the same lots. 3d. One dated August 20th. 1842, between Eliza B. Jumel, of the first part, Michael Werckmeister, of the second part, and Francis Phillipon, of the third part, covering lots Nos. 5, 6, 7, 9, 10, 11, 12, 13, 14 and 15, the lot corner Broadway and Liberty street, and the lot in Liberty street, and 4th. One dated August 20th, 1842, between Francis Phillipon, of the first part and Eliza B. Jumel, of the second part, covering the same lots and premises.

In or prior to the year 1828, the title to the lands described in the four deeds above named, became vested in Mary Jumel Bownes, a young woman then living with Mrs. Jumel, and who had been, while a child of tender years, taken by said Jumel and wife into their house and cared for.

Under two separate conveyances, dated respectively, Dec. 11th, 1827, and May 13th, 1828, said Mary Jumel Bownes conveyed the aforesaid premises to Michael Werckmeister, in trust that the said party of the second part (Werckmeister), and his heirs collect and receive the rents, issues, and profits of the said above described and hereby conveyed premises, and every part and parcel thereof, and pay over the same unto Eliza Brown Jumel (the wife of Stephen Jumel, late of the city of New York, now of Paris, in France) or, at her election suffer and permit her the said Eliza Brown Jumel, to use,

occupy and possess the said premises, and to have, take, collect, receive and enjoy the rents and profits thereof, to and for her own separate use and benefit, and to and for such other uses and purposes as the said Eliza Brown Jumel shall please and think fit, at her own free will and pleasure, and not subject to the control or interference of her present or any future husband, and the receipt and receipts of her the said Eliza Brown Jumel, shall at all times be good and sufficient discharges for such payments and for such rents and profits to him, the said party of the second part, his heirs, executors and administrators, and to the person and persons who are or shall be liable to pay the same; and upon this further trust, that the said party of the second part or his heirs, lease, demise, let, convey, assure and dispose of all and singular the said above described premises, with their and every of their appurtenances, to such person or persons, for such term or terms, on such rent or rents, for such price or prices, at such time or times, to such uses, intents and purposes, and in such manner and form as she the said Eliza Brown Jumel, notwithstanding her present or any future coverture, as if she were a feme sole, shall, by any instrument in writing, executed in the presence of any two credible witnesses, order, direct, limit or appoint; and in case of an absolute sale of said premises or of any part thereof, to pay over the purchase money to the said Eliza Brown Jumel, or invest the same, as she shall order and direct; and upon this further trust, upon the decease of the said Eliza Brown Jumel, to convey the said above described premises or such parts thereof as shall not have been previously conveyed by the said party of the second part, or his heirs, and with respect to which no direction or appointment shall be made by the said Eliza Brown Jumel in her lifetime, to the heirs of the said Eliza Brown Jumel in fee-simple; and pay over to the heirs of the said Eliza Brown Jumel such moneys as shall remain in the hands or under the control

of the said party of the second part or his heirs, arising from collections of the rents and profits, or the proceeds of the sales of the above described premises or any part thereof.

On the 21st day of November, 1828, said Eliza B. Jumel executed a deed of appointment under said trust deeds, whereby she did order, direct, limit and appoint that immediately after her demise, the trustee, Michael Werckmeister, or his heirs, convey lots Nos. 5, 6, and 8, the Broadway and Liberty street lot, and the Liberty street lot, to such person or persons, and to such uses and purposes, as she, the said Eliza Brown Jumel, should, by her last will and testament under her hand, and executed in the presence of two or more witnesses, designate and appoint; and for want thereof, then that he convey the same to her husband, Stephen Jumel, in case he be living, for and during his natural life, subject to an annuity, to be charged thereon during his said natural life, of six hundred dollars, payable to Mary Jumel Bownes; and, after the death of her said husband, or in case he should not survive her, then, immediately after her death, to her, the said Mary Jumel Bownes and her heirs, in fee. This appointment does not cover or affect, or pretend to cover or affect, the eight lots, numbers 7, 9, 10, 11, 12, 13, 14 and 15. Subsequently Michael Werckmeister, the trustee in the aforesaid trust deeds mentioned, conveyed (Eliza B. Jumel uniting in the conveyance) to Alexander Hamilton, lot 6 (covered by the appointment), and lots 7, 9, 10, 11, 12, 13, 14 and 15 (not covered by the appointment). These lots were all subsequently reconveyed by Hamilton to Werckmeister, upon the same trusts as in the deeds by Bownes to Werckmeister. Afterwards the said Werckmeister conveyed (Eliza B. Jumel uniting in the conveyance) to Francis Phillipon, in fee, the said lots, 6, 7, 9, 10, 11, 12, 13, 14 and 15, together with lot 5, the lot corner Broadway and Liberty street, and the lot in Liberty street; and Francis

Phillipon subsequently conveyed the same, in fee, to Eliza B. Jumel.

This suit is based upon the theory, that, by the appointment above mentioned, Mary Jumel Bownes became vested with an estate in fee, in the premises covered by said appointment, subject to the estate for life of said Eliza B. Jumel, and subject to the revocation of the appointment by said Eliza B. Jumel, by the execution of her last will and testament, which she never did make; and that therefore, upon her death, the said Mary Jumel Bownes (or her heirs, Eliza Jumel Pery and William I. Chase), became the owners in fee of said premises.

It would seem to be impossible to take up the alleged errors in their order, and to attempt making a brief upon each, separately, as they are so interwoven with each other, and depend so much upon one another, that the observations made with reference to any one, would apply quite as well to several of the others; and if we attempt to make separate points for each, we really go over the same ground several times, which seems to be useless; and we offer this as our excuse for not taking up each error separately, and stating the points with reference to it.

Upon the questions presented by the alleged errors, the appellant submits the following points:

I.

Immediately upon the execution and delivery of the trust deeds, Eliza B. Jumel, by virtue thereof, and of the statutes of the State of New York, became seized, in fee simple absolute, of the premises in question.

a.—The first Revised Laws of the State of New York (1813) vol. 1, page 72, § 1, which is a copy of the

English statute of uses, 27 Henry 8, c. 10, provides "that, when any person shall be seized of lands, &c. to the use, confidence or trust of any other person or body politic, the person or corporation, entitled to the use in fee simple, for life or years, or otherwise, shall from thenceforth stand and be seized or possessed of the land, &c, of and in the like estates as they have in the use, trust or confidence; and that the estate of the person so seized to uses shall be deemed to be in him or them that have the use, in such quality, manner, form and condition as they had before in the use."

See Blackstone's Com., vol. 2, chap. 20.

Blackstone, speaking of the effect of the statute above referred to, says, "The statute thus executes the use, as our lawyers term it, that is, it conveys the possession to the use, and transfers the use into possession, thereby making *cestui que use* complete owner of the lands and tenements, as well at law as in equity.

b,—There were no conditions or limitations annexed to her fee, but she held it absolutely. Upon such a title no such powers in trust as are contended for could be raised. Her power to convey did not depend on the power expressed, but was an inseparable incident of ownership, and so of her power to will or appoint.

II.

The various powers expressed in the trust deeds, became, immediately upon the execution of the trusts, by operation of the statute, merged in the greater title of the fee.

In taking this position we do so with a full knowledge of the fact that some of the English decisions hold that the powers are not merged.

Kent's Commentaries, vol. 4. page 348, upon this subject, says: "It has also been a question of much discussion, and of alternation some of opinion, whether a power was not merged or absorbed in the fee, in the case of an estate limited to such uses as A should appoint, and in default of appointment, to himself in fee. The Master of the Rolls in Maundrell *vs.* Maundrell (7 Vesey, 567), held that the power in such a case, followed by a limitation of the fee, must be absorbed by the fee, which includes every power. This seems to be the good sense and reason of the thing, for the separate existence of the power appears to be incompatible with the ownership of the fee But the weight of authority is decidedly in favor of the conclusion that the power is not extinguished, and may well subsist with and qualify the fee."

To the same effect is the following from Coke upon Littleton. Butler's Notes, vol. 2, 272, [a note, 3,] where speaking of the statute of 27 Henry VIII, chap. 10 (which is the same exactly as the statute under consideration), says: "There seems to be little doubt that the intention of the Legislature in passing this act, was utterly to annihilate the existence of uses considered as distinct from the possession, but they have been preserved under the appellation of trusts.

"The Courts hesitated much before they allowed them under this new name. On the one hand, it had been clearly the intent of the Legislature to destroy them, while they continued uses at the common law; on the other hand, motives of equity, or rather of compassion, and the general bent of the nation pleaded strongly in their favor. The latter prevailed."

b. By an examination of the English authorities which support the position that the power does not merge in the fee, it will be seen that they are based principally upon the ground of public policy, in

that conveyancers there had acted upon this theory, and to decide otherwise would have the effect of upsetting very many English titles.

c. It would seem that no such reason could exist in this country. We have, with great care, looked for some American decision, upon this point, but have been unable to find any. We, therefore, submit that the Court should look at it as an entirely new question, and, in so doing, there can be no doubt that the American view must be that the absolute fee covers all other powers and rights connected with the estate.

The policy of our law, and especially as held by the Legislature and Courts of the State of New York is opposed to the tying up of lands, and in favor of having them where some person or persons may dispose of them in fee.

This Court is now to pass upon this statute of the State of New York, under which the trusts or uses and powers in question were created. That act, it is conceded, gave to Eliza B. Jumel, under the uses, an absolute estate in fee, and, at the same time, gave her certain powers; and the question for the Court to consider is whether those powers can subsist in the same person holding the fee and independent thereof. This is an American law, and should be governed by American principles.

It is conceded that the decisions of the Courts of other countries upon a particular question should have their proper consideration with this Court, when the same question is presented to it for determination. But we submit that this Court should first carefully examine those cases, and in deciding upon the question, certain rules should govern it as to the weight which it will attach to the decision of the foreign tribunal.

If the foreign tribunal has endeavored to thwart the obvious intent of the Legislature in making the law, and in order to do that, placed its decision upon grounds of public policy which do not exist

in this country; or if, in its attempt to thwart the intentions of the Legislature, it places its decision on the ground that "the general bent of their nation pleaded strongly" for it, when the general bent of our own nation pleads as strongly against it, then we respectfully and confidently urge that this Court is not bound to follow the decision, and that the decision should have no weight or force whatever with this Court.

If the decisions were based upon broad and well established principles of law, then the case would be entirely different.

If these English decisions are, as we submit, of no force in this Court, then the Court should apply well-known principles to the decision of the case. On this supposition we submit—

1st. That in the construction of a statute, the Court is bound first to ascertain the intent of the Legislature, and to declare that intent.

2d. That it should attach due weight to the opinions of learned jurists or elementary writers upon the subject.

Chancellor Kent says "that the good sense and reason of the thing seems to be that the power must be absorbed by the fee, which includes every power, and that the separate existence of the power appears to be incompatible with the ownership of the fee."

To the same effect is Lalor on Real Estate, pages 209 and 210.

(*d.*) If then the powers to will, convey and appoint were all merged in the fee, the pretended appointment was of no force or effect, further than as it might operate as a testamentary disposition

III.

By the law, as it stood at the time of the creation

of the trusts and powers hereinbefore referred to, where two or more powers were granted, the power of sale, if one of them, overrode all the other powers, and when exercised superseded all of the other powers, even though some of them had been previously exercised.

(*a*) "Where a party having two powers, for example, to charge portions and to lease, executes one power, leaving the other in operation, the exercise of the latter may supersede the estate actually first appointed, just as if it had been contained originally in the settlement creating the powers. This must depend upon the nature of the powers."

Sugden on Powers, 8th ed., page 490, § 33.

(*b.*) "Where there is a term to raise portions as the father shall appoint, and he has also a power of jointure, if the latter power is exercised, it will override the term, and it is immaterial that an appointment be made of the portions before the jointure was appointed."

Sugden on Powers, 8th ed., page 490, § 32.

Carter *vs.* Carter, Moseley's Rep., 365.

(*c.*) "A power of sale must defeat every limitation of the estate, whether created directly by the deed or through the medium of a power, * * * for the very object of a power of sale is to enable a conveyance to a purchaser discharged of the uses of the settlement."

Sugden on Powers, 8th ed., page 489, §§ 29 and 30.

(*d.*) "As to powers executed in favor of the family, a jointure, whether created before or after a provision for the jointress's younger children, ought to take precedence of it."

Sugden on Powers, 8th ed., p. 489, §§ 29 and 30.

(*e.*) A sale or exchange, made under the execution of a power, revokes a jointure or provision for younger children made by the settlement itself, or by the exercise of a power contained in the settlement. The power of selling overreaching every other power, although subsequently exercised in point of time, (excepting leases previously executed.)

Sanders on Uses and Trusts, 2d Amer. ed., vol. 1, pages 173, 174, 175.
Washburn on Real Property, 3d ed., vol. 2 page 622.

(*f.*) "Where several powers have been given by the same deed, and two or more of them are executed and no provision has been made in regard to their priorities, the intention of the settlement and the object of the powers are guides to the construction, bearing in mind, however, that the power of sale necessarily roots out all the estates in settlement, excepting in so far as the same are protected by the intention of the instrument."

Sugden on Powers, 8th Ed., p. 482, § 10 and page 488, § 27.
Washburn on Real Property, 3d Ed., Vol. 2, page 622.

Applying the rules above laid down to the case before us, we find that, by the settlement or trust deeds, Eliza B. Jumel was vested with the power to lease, mortgage, appoint, sell or devise by will.

She did first execute the power of appointment in 1828, in favor of Mary Jumel Bownes, under whom the appellees claim, and then afterwards executed the power of sale, the appellant claiming under those deeds. Now can, there be any question that she had the right to exercise the power of sale, and that when she did exercise that power, it overrode and superceded all the other powers, including the power of appointment executed pre-

viously thereto? If so, then the conveyances under the execution of the power of sale were valid, and vested the absolute title in fee in the grantee, entirely relieved from the other powers of leasing, appointing, mortgaging or disposing of by will.

On the argument of this case in the court below, the learned counsel for the appellees relied entirely upon the rule that, the power of appointment having been once exercised, it was irrevocable unless the power of revocation was specially reserved in the instrument by which the appointment was made, and that the reservation of the power to will was not a reservation of the power to revoke in any other manner.

Without doubt this is a correct statement of the law, but it does not reach the case under consideration. In this case it is not claimed that Eliza B. Jumel did execute any revocation of the appointment, but that she simply exercised another power, to wit, the power of sale, which was also given her by the settlement, and which, by its very nature, overrode and was superior to the appointment. It was suggested by the appellees, that if Eliza B. Jumel intended to exercise the power of sale subsequent to the exercise of the power of appointment, and have it operate as a virtual revocation of the power of appointment, she would have reserved it in the instrument by which she made the appointment, and that her failure so to do was *prima facie* evidence of her intention that the appointment should be final. If we are seeking to ascertain the intention of the party, Eliza B. Jumel, we may find it as follows: first by an examination of the instruments themselves. In the appointment she simply says, "I do hereby order, direct, limit and appoint," (see page 98, folio 261, printed case). While in the execution of the power of sale, the words are used, "doth *absolutely and irrevocably* order, direct, limit and appoint." (See page 78, folio 192 and page 86, folio 221, printed case.) Why did she omit the words *absolutely and*

irrevocably, in the appointment, and be so careful to use them in the execution of the power of sale, if she did not mean and wish to have it understood thereby, that the appointment was not absolute and irrevocable, but was exercised subject to the power of sale which was still reserved and unexercised, and which when she did exercise it, was to override and supersede the appointment?

Second.—The obvious intention of the party. Can there be any doubt in the mind of any unprejudiced person that Eliza B. Jumel did not intend, by the appointment, to release her right, which she had, of absolutely exercising the power of sale over the property? She had the fee of a large amount of land, mostly unproductive, and might very possibly during her lifetime find herself in need of money, with which to defray her expenses, and which she could easily procure by a sale of a portion of her unproductive real estate. Can it be possible that she intended to place herself in a position where she might suffer for the very necessities of life, and from which there could be no relief? Certainly, if we concede to her the possession of ordinary common sense, we must answer this question in the negative. If the appellees, position is correct, that the appointment was to Mary Jumel Bownes, or in case of her death during the lifetime of Eliza B. Jumel, then to the heirs of Mary Jumel Bownes (which we shall consider in our fifth point), then there was no possible way to convey the property or to realize on it during her lifetime, as it could not then be determined who would be the heirs of Mary Jumel Bownes, and it would be impossible for them to unite in a conveyance or release of their interest under the appointment. It would seem to be absurd to assume any such intention on the part of Eliza B. Jumel, in executing the appointment.

Her evident intention was simply to provide for a contingency.

She, without doubt, intended to retain the control of her property during her lifetime, to sell it if she desired; and, finally to dispose of such part of it as remained unsold at her death, by her last will and testament, but to provide for the contingency of her becoming unable to make a will, or her failure or neglect so to do, or of her sudden death, she executes the appointment.

Third.—Every person is presumed to know the law, and there was no exception in the case of Eliza B. Jumel. The law, as we have shown, reserved to her, on the execution of the power of appointment, the right to supersede it by the execution subsequently of the power of sale, which overrode all other powers. It would have been as absurd as it was useless for her to have reserved, in the appointment, the right to revoke it by the exercise of the power of sale, when the law reserved the right for her.

It may be suggested that the power of sale was not in Eliza B. Jumel, but in the trustee, Michae Werckmeister. If this were so it would make n difference with the propositions above laid down, as it is entirely immaterial whether it was in Eliza B. Jumel, or in the trustee, Michael Werckmeister. That the power of sale did exist in one of them cannot be denied, and that when the power was exercised it overrode the appointment and all other powers, we think is clear; and that Eliza B. Jumel and Michael Werckmeister, did both unite in the execution of the power the record shows. It cannot therefore make any difference in determining this question, whether the Court decides that the power was in Eliza B. Jumel or in Michael Werckmeister, or in the two combined.

"In old precedents of settlements it is not unusual to meet with powers by which the donors are authorized *to limit and appoint* the estates which

they are enabled to create. In later times, the mind being carried to the *effect* of the act to be done, and not to the mode by which it was to be exercised, it became usual to empower the donee "to lease, sell, exchange," &c., and not to limit or appoint by way of lease, sale or exchange. Both forms are accurate; the ancient mode describes the *operation* of the act; the modern practice points out the effect of it; And when it is considered that the power is equally well created, whether words denoting the operation, or words describing the effect are used," &c.

Sudgen on Powers 8th, Ed. page 104 § 7.

From the above and other authorities of equal weight, we conclude that Eliza B. Jumel, and not the trustee Michael Werckmeister, had the power of sale; but we do not care to discuss the question further, as it is immaterial whether Eliza B. Jumel or Michael Werckmeister had the power, or whether it was vested in the two combined.

IV.

The appointment was not completed until delivery, and there is no proof of a delivery.

Maundrell *vs.* Maundrell, 10 Vesey Jr., 245–262.

V.

Where an appointment is made, directing a certain act to be done by the trustee upon the death of the appointor, it lapses upon the death of the

appointee or donee during the lifetime of the appointor.

Sugden on Powers, page 460, §§ 10 and 11.
Alcock *vs.* Sneyd, 1 Moore, 165.
Pendnell *vs.* Elwes, 1 East, 442.

(*a.*) In the case under examination, the appointment was that the trustee convey, upon the death of the appointor, and upon the happening of certain other events, to Mary Jumel Bownes in fee. (See page 79, folio 261, printed case).

Mary Jumel Bownes, the appointee, departed this life on the 5th day of May, 1843. (See page 2, folio 4, printed case).

Eliza B. Jumel, the appointor, did not depart this life until the 16th day of July, 1865. (See page 2, folio 4, of printed case).

(*b.*) But it is claimed that this appointment was not simply to Mary Jumel Bownes, but, in case of her death before the appointor, then, to the heirs of said Mary Jumel Bownes. This must depend mainly upon the last few words of the appointment. (See page 98, folio 261 of printed case.) They are as follows: "Then, immediately after my own death, to her, the said Mary Jumel Bownes and her heirs in fee."

We respectfully submit that what was intended was simply to appoint to Mary Jumel Bownes in fee.

(*c.*) The words "and her heirs" were simply words of inheritance, and in, order to appoint the fee to Mary Jumel Bownes, it was necessary to use the words "and her heirs;" otherwise it would have been but a life estate. These were the usual and necessary words of inheritance then used in every conveyance whereby it was intended that a fee was to be given or conveyed.

(*d.*) Again, if the construction claimed by the appellees is to prevail, it must be made to read "to her the said Mary Jumel Bownes, in fee, or in case of her death during my life time than to her heirs in fee." If this was the way that the appointment was intended to read, would not Judge Kent, who was a careful man, and who well knew the use of words, have inserted those words to save any question?

(*e.*) If we are to look at it simply with reference to the gramatical construction to be placed upon it, the argument becomes still stronger in favor of the position taken by the appellant herein. The word "and" is always used as a conjunctive, *i. e.* serving to unite the words separated by it, while the word "or" is always used as a disjunctive. The use of the word "*and*" shows that Mary Jumel Bownes, and her heirs were treated as united together, that is as but one person. If, on the other hand, it had been intended to make the heirs a separate individual or body, to take on a certain contingency then the disjunctive "*or*" would have been used.

(*f.*) Powers and the exercise of them are always construed strictly against the appointee, and in favor of the heirs of the owner of the fee.

If, then, the words used in the appointment are to be taken literally, or according to their usual construction, we must say that the appointment was to Mary Jumel Bownes alone, and not to her heirs, in case of her death during the lifetime of the appointor Eliza B. Jumel, and that, upon the death of Mary Jumel Bownes, the appointee, during the lifetime of Eliza B. Jumel, the appointor, the appointment lapsed, and thereafter the estate stood as though no appointment had ever been made.

VI.

Before leaving this branch of the subject, it is important that we examine the trust deeds themselves.

to ascertain, if possible, from them, what was the intention of the parties with reference to the two powers of sale and of appointment, for, in the determination of questions arising under trust deeds or settlements, the primary question for consideration is, what was the intention of the parties to the original trust deed or settlement, and the general intention must be carried into effect, though it may defeat a particular intent.

Capal *vs.* McMillan, 8 Port. (Ala.) 197.
Jackson *vs.* Veeder, 11 Johns. (N. Y.) 169.
Jackson *vs.* Jansen, 6 Johns. (N. Y.) 73.

a. In the trust deed, after creating the various powers, the deed provides "and upon this further trust, upon the decease of the said Eliza Brown Jumel, to convey the said above described premises, or such parts thereof as have not been previously conveyed by the said party of the second part, or his heirs, and with respect to which no direction or appointment shall be made by the said Eliza Brown Jumel in her lifetime, to the heirs of the said Eliza Brown Jumel, in fee simple."

(See page 69, folio 161, printed case.)

Can there be any doubt, upon the reading of this portion of the trust deed, that it was the intention of the parties that an appointment should be made only of such portion of the lands as had not been conveyed during the lifetime of Eliza B. Jumel?

In fact the authority given to the trustee to convey at the death of Eliza B. Jumel, to such person as might be appointed, was limited to such lands as had not been previously sold.

It is manifest from the whole structure of the trust deed that the right to sell, during the lifetime of Eliza B. Jumel, was not to be interfered with, but, if not sold, then the *cestui que trust* was allowed to dispose of the same by devise or appointment.

Again, the trust deed contains no power of revocation.

From this we must certainly draw the inference that the parties executed the instrument with a full knowledge of the law and authorities with reference to the execution and priority of the various powers; that they knew full well there was no necessity for granting a power of revocation with reference to any of the powers, as the power of sale overrode and superseded all of the other powers when exercised; and that if Eliza B. Jumel, even after the execution of the powers of appointment or devising, always held in her own hand, in the power of sale, a check which she could use. If the appointee should for any reason forfeit the respect, esteem or confidence of the appointor, or should die, or become insane, or, for any other reason, it should be found necessary to stop the estate from passing into the hands of the appointee named, Mrs. Jumel always had the right, by exercising the power of sale, or requiring the trustee so to do, to cure or remedy the defect or evil.

If this had not been well understood by the parties and their attorneys, they would certainly have given to Mrs. Jumel the power of revocation.

This power of revocation was always contained in an instrument containing one or more of the subsidiary powers; but, where the overriding power of sale was also given, this power of revocation was entirely unnecessary, as the grantee of that power, by its exercise, superseded the appointment and disposed of it as effectually as by revocation.

It will be borne in mind in this connection that the conveyances to Mary Jumel Bownes were simply for the purpose of raising these trusts, as she was but a ward of Mrs. Jumel, without money to make a purchase, and simply took the title for the purpose above named; the object evidently being, to put the property by these trusts entirely under the control of Eliza B. Jumel, and virtually to have it absolutely hers.

It is not for us here to speculate upon the reasons which prompted Eliza B. Jumel to exercise the power of sale, when, and as she did, nor does it really have any connection with this branch of the case. When she executed the appointment in 1828, Mary Jumel Bownes was a young lady, living with her, and to whom she was undoubtedly attached. When she executed the power of attorney to Hamilton, in 1834, it was evidently in good faith, and for a full consideration. Before executing the power of sale in favor of Phillipon, in 1842, Mary Jumel Bownes had married (in 1832,) and left Mrs. Jumel's house, and had been living with her husband in Hoboken, away from Mrs. Jumel (from 1841 to 1843); very naturally, when left to herself, her husband deceased (in 1832), the little girl (Mary Jumel Bownes) whom she had taken to her home, and had been attached to, married and gone, and she left alone, her thoughts turned to her early days and to the son, (the appellant) whom she had cast adrift upon the world, years before. How natural, then, that she should have deemed it to be her duty to exercise the power of sale and thereby supersede the appointment, and place the property in such shape that she could provide for this son! Her pride and position in society, and her own desire to use and have the control of the property during her lifetime, prevented her from conveying the property directly to her son. But she kept it in her power to give it to him by will, or to do so, as she did, by dying without a will and thereby leaving it to him, her only son and heir at law, and the only living person in whose veins flowed any of her own blood.

But this is speculation. Whatever her object was concerns none of the parties to this action. She chose to exercise the power, as she had the undoubted right to do, and there the matter must end.

VII.

For the reasons above stated, viz:

First. That the fee was vested in Eliza B. Jumel;

Second. That by reason thereof, the powers, including that of appointment, became merged in the fee;

Third. That, if not merged in this fee, then that power of sale overrode all of the other powers, and when exercised, superseded all of the other powers;

Fourth. That the due appointment was never delivered, and was therefore inoperative; and

Fifth. That by reason of the appointee, Mary Jumel Bownes, dying during the lifetime of the appointor, the appointment lapsed; the appellant insists that the appellees, Eliza Jumel Pery and William I. Chase, as children and heirs at law of Mary Jumel Bownes, took and had by virtue of the appointment no right or interest whatsoever in the real estate, which is the subject of this action, but on the contrary, Eliza B. Jumel and the trustee, by the two conveyances to Phillipon and Hamilton, respectively conveyed the absolute title in fee, to the said lands, relieved entirely of the appointment.

We come now to consider the question whether the four conveyances which were adjudged by the Court below to be fraudulent as against Eliza Jumel Pery and William I. Chase, were, in reality, so fraudulent, or whether the Court below erred in so adjudging them, and we submit—

VIII.

For the reasons above stated it is evident that they were entirely legal, so far as Eliza Jumel Pery and William I. Chase, are concerned, unless they can successfully show that they are fraudulent by reason of an insufficient consideration.

IX.

An instrument under seal cannot be held to be void for want of consideration. The seal implies consideration.

X.

If it is claimed that the deeds were fraudulent by reason of an insufficiency of consideration, then the appellant suggests that the appellees do not, nor did they ever stand in such a relation to Eliza B. Jumel that they can assert the inadequacy of consideration.

a. Only her creditors, or possibly her heirs or executor, may raise the objection.

b. The appellees were not in any manner injured by reason of the inadequacy of the consideration. Supposing that Eliza B. Jumel had received $1,000,000 consideration, instead of $1, or nothing, how would the appellees have been benefitted or injured by that fact? They were in no way related to her, and at her death could claim nothing as next of kin. She died without leaving a will, and thereupon her property descended to the appellant, who was her only heir and next of kin. The appellees are equally as well off whether Eliza B. Jumel died leaving personal property of the value of $1 or $1,000,000. They are, therefore, not in a position to object to the conveyances on the ground of the inadequacy of the consideration.

c. Again, the appointment was made without consideration, and with the knowledge of the law that Eliza B. Jumel had the power and right at any time to supersede the appointment by exercising the power of sale vested in her. If our view of the law, as hereinbefore expressed, is correct, Eliza B.

Jumel had the undoubted right at any time to exercise the power of sale for a real or nominal consideration, to supersede the appointment, and convey the absolute fee. How then can it be said that, in the exercise of that right, she committed a fraud upon the appellees? She had virtually said by the appointment that upon her death Mary Jumel Bownes should have the property, unless she should in her lifetime conclude to have it sold, or should conclude to dispose of it by will; then, when she does conclude to sell, the object of her charity claims that it is a fraud upon her; that her benefactress should not exercise this right to dispose of her own property, in the manner which she had reserved the right to! It would seem to be unnecessary to consider this branch of the case further. We cannot conceive that the learned counsel for the appellees will seriously urge that the execution of the power of sale was a fraud upon the appellees, by reason of the failure or inadequacy of consideration for the act, but will place it upon the ground that Eliza B. Jumel, after executing the appointment, had no power to dispose of the property except by will.

XI.

Up to this point we have only considered the question with reference to the law as it stood at the time of the execution of the appointment, but the Revised Statutes of the State of New York, which went into operation on the 1st day of January, 1830, made radical changes in the law with reference to trusts, uses and powers; and, even though the appellees were right in their construction of the law as it stood prior to January 1st, 1830, still the Revised Statutes would have made a very decided change in the rights of the parties.

(*a.*) The Revised Statutes of the State of New York (Uses and Trusts, page 728, § 45,) provide as follows: "Uses and trusts, except as authorized and modified by this article, are abolished."

It has been held that this section applied to all uses and trusts then in existence, as well as those created afterwards.

See Ayres *vs.* The Methodist Church, 3d Sandford N. Y. 351. At page 372, Judge Duer says, speaking of this section, "Not only are uses and trusts abolished, but to exclude the supposition that any, previously existing, were meant to be preserved, it is declared, that none are to be excepted but those which the article itself authorizes and modifies;" and, on page 378, "no use or trust can be valid that the Revised Statutes have not authorized."

Therefore, under this section, the uses and trusts under which Eliza B. Jumel took the land, were entirely abolished, and she took and held the same entirely free and discharged of them.

(*b.*) This section was followed by sections 46, 47 and 48, as follows:

"§ 46. Every estate which is now held as an use, executed under any former statute of this State, is confirmed as a legal estate."

"§ 47. Every person who, by virtue of any grant, assignment or devise, now is, or hereafter shall be, entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same condition, as his beneficial interest."

"§ 48. The last preceding section shall not divest the estate of any trustees, in any existing trust, where the title of such trustees is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust."

The last two sections apply to trusts created before the Revised Statutes.

Bellinger *vs.* Shaffer, 2 Sandf. Ch. 293.
Pitcher *vs.* Carter, 4 Sandf. Ch. 1.
Nicoll *vs.* Walworth, 4 Denio, 385.

Under these sections Eliza B. Jumel took an absolute fee in the land.

See Jumel *vs.* Jumel, 7 Paige, 591.

This is, in fact, *res adjudicata*. The question of the estate of Eliza B. Jumel in the Broadway and Liberty street lot, under the sesame trust deeds, was decided in the year 1839 by Chancellor Walworth in the Court of Chancery of the State of New York on an appeal from a Surrogate's decree.

In the case of Jumel *vs.* Jumel, above referred to, the facts were briefly as follows :

Stephen Jumel (formerly the owner of the land in controversy herein) died in the year 1832, intestate. Eliza B. Jumel, his widow, administered upon his goods. At the time of his death, there was in existence a mortgage made by the deceased upon the premises firstly described in the bill herein, to Benjamin Desobry, in the year 1824, while the deceased was the owner of the said property, to secure payment of $6,000. The administratrix paid off this mortgage, and when called to account by the Surrogate of New York, credited herself on said accounting with the sum above named. The next of kin of the deceased, through their counsel, Mr. Charles O'Conor, objected to this item in the account, on the ground that under and by virtue of section 47, of the statute above referred to, Eliza B. Jumel, the administratrix, was herself the owner in fee of the land covered by the mortgage and that the $6,000 should be paid by her indivually as such owner, and not charged to the next of kin.

From the decision of the Surrogate, an appeal was taken to the Chancellor, who held, as was contended for by the next of kin, through their said counsel. The opinion of the Chancellor may be found on pages 593, 594 and 595. He says, at page 595:

"But, as the administratix was herself the owner of the mortgaged premises, her equitable interest therein as *cestui que trust*, being turned into a legal estate by the provisions of the Revised Statutes (1 R. S., 727, § 47), she should have paid the mortgage out of her own property, which was the primary fund for that purpose, instead of paying it out of the estate of the decedent in her hands as administratrix. It is evident, therefore, that the Surrogate was right in supposing she had no equitable claim to be credited the amount of this debt, or the interest thereon, after the death of her husband, in the settlement of her accounts with the estate."

Again, § 94 (old section 73), page 732 of the Revised Statutes, provides as follows: "Powers, as they now exist by law, are abolished; and from the time this chapter shall be in force, the creation, construction and execution of powers shall be governed by the provisions of this article."

§ 104 (old § 82), page 733.

"In all cases where such power of disposition exists (*i. e.*, an absolute power), and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee."

§ 106.—"Every power of disposition shall be deemed absolute by means of which the grantee is enabled in his lifetime to dispose of the entire fee for his own benefit."

Comment upon the various sections above referred to, *i. e.*, the 45th, 46th, 47th, 94th, 104th and 106th, seems to be unnecessary. In fact, it was substantially conceded by the counsel for the appellees, on

the argument in the Court below, that, if the sections of the Revised Statutes above referred to, operated upon the trust deeds under examination, there was no doubt of Eliza B. Jumel having by force of the statute an absolute fee in the land, and a right to convey it or dispose of it in such manner as she thought best; but it was contended that the trusts in question were relieved from the operation of the statue by reason of the exception contained in title V., section 11. of the said chapter, page 750, which is as follows: § 11. "None of the provisions of this chapter, except those converting formal trusts into legal estates, shall be construed as altering or impairing any vested estate, interest or right; or as altering or affecting the construction of any deed, will or other instrument which shall have taken effect at any time before this chapter shall be in force as a law."

We fail to see how this section saves the trust in question. This section was evidently adopted to save or avoid the constitutional questions which would have arisen but for it, but it makes a special exception with reference to the sections converting formal trusts into legal estates.

The case under consideration is one that is covered by that exception. There was a merely formal trust in Werckmeister, and by the statute, an absolute legal estate was created in Eliza B. Jumel, and the formal trust and powers vanished before that.

On the argument below, the learned counsel for the appellees referred to the case of Wood *vs.* Mather, or Anderson *vs.* Mather, 44 N. Y. 249, 258, as sustaining the view that section eleven would cover the trust under examination, and relieve it from the operation of this statute. The trust in that case was created in 1827, as follows, "upon the special trust and confidence, nevertheless, that the said party of the third part (West,) shall pay to Judah Wood, of Rochester, during her natural life, the income, rents and profits to arise from the said

lot of land; and upon the further trust, that after the death of the said Judah Wood, the said party of the third part, or his heirs, shall grant, release and convey to the children of the said Judah Wood, her surviving, or to the children of such of her children, as may die before the said Judah Wood, the said lot of land and premises in fee simple."

That was by no means a formal trust, as the *cestui que trust*, Judah Wood, was not entitled to the actual possession of the land, nor could she have or exercise any control over it, as spoken of in sections 47 and 48 of the statute. On the ground that it was not a formal trust, the Court decided that it was relieved from the operation of the statute, expressing no doubt that the statute would have made an absolute fee of it, had it been a formal trust, as in the case under consideration.

If the Court should feel disinclined to concur with us in the position taken in our second point, viz., that the powers were all merged in the fee, then we submit that sections 83 and 85, above referred to, place the matter beyond a question.

Chancellor Kent, in speaking of this question and of the two sections above referred to, says: "I apprehend that, by the New York Revised Statutes, the power is extinguished in such a case, for it is declared that in all cases where an absolute power of disposition is given, *and no remainder is limited on the estate of the grantee of the power*, he takes an absolute fee, and every power of disposition is deemed absolute when the grantee is enabled to dispose of the entire fee for his own benefit. This is going, and, I think, very wisely, beyond the existing English rule; for the statute here applies to every case of an absolute power of disposition, without any limitation in default of appointment, whereas the English law is, that though such a power in a will, without any prior limited interest, would give a fee, yet, in conveyances, such a limitation would confer a power merely, and not give an estate in

fee. The argument is entirely with the New York amendment, and 'in reason and good sense,' as the revisers said when the bill was proposed, 'there is no distinction between the absolute power of disposition and the absolute ownership.' The distinction is dangerous to the rights of creditors and purchasers, and it is an affront to common sense to say that a man has no property in that which he may sell when he chooses, disposing of the proceeds at his pleasure.' "

Kent's Commentaries, vol. 4, p. 349.

If the views above expressed are concurred in by the Court, then the decree or judgment of the Court below, adjudging the deeds to and from Hamilton and to and from Phillipon void, was error, and should be reversed.

XII.

We come now naturally to consider the questions arising with reference to the French letters, and the rights claimed by Eliza Jumel Pery and her husband under them. The claim with reference to them is, that Eliza B. Jumel, the mother of the appellant, did on or about the 26th day of May, 1854, enter into a treaty concerning a marriage between Eliza Jumel Pery (then Chase) and Paul R. G. Pery, two of appellees herein: that she made false representations with reference to the value of her property, with intent to deceive the parties to that agreement, viz.: Eliza Jumel Chase, Paul R. G. Pery, and his father John Edward Pery, and to induce them to consent to a marriage between the said Eliza Jumel Chase and Paul R. G. Pery.

That the aforesaid parties believed said representations to be true, and relied upon them and were induced thereby to consummate said marriage, and did consummate the same on the 15th day of July,

1854, and they claim that by reason of the foregoing facts, Eliza Jumel Pery was entitled at the death of Eliza B. Jumel, to the whole of her property, real and personal!

It is hardly conceivable that the learned counsel for the appellees ever seriously intended to present such a question to this Court, or any other Court, for determination, still, we should fail to perform our whole duty to our client, did we pass the question (however absurd it may seem to us) without expressing our views upon it.

a. The first legal difficulty in the way of the appellees is that, while there had been negotiations between John Edward Pery and Eliza B. Jumel, in the month of May, 1854, in which Mr. Pery was endeavoring to have Mrs. Jumel commit herself to some positive agreement to invest a certain sum as a dowry, for Eliza Jumel Pery, in case Mr. Pery's son, Paul R. G. Pery, would marry the young lady, and making propositions to her, which she declined, and she making certain other propositions to him which he does not seem to have accepted, they had never come to any agreement or understanding until July 5th. On that day, however, the parties did agree and their agreement was reduced to writing. The letters and agreement may be found on pages 201 and 202.

By the terms of that agreement, Eliza B. Jumel agreed to pay Mary Jumel Chase 5,000 francs nually. And that agreement appears to have been kept by Mrs. Jumel. (See testimony of Eliza Jumel Pery, pages 105 and 106; folios 279 and 280 of printed case).

The proposition of law we wish to suggest to the Court is, that where parties, after negotiations, between them, finally agree, and commit the agreement to writing, all of the preceeding offers, negotiations, promises or verbal understandings are in law presumed to be incorporated in the writing,

and a party is not at liberty to prove the prior negotiations or promises.

Coons *vs.* Chambers, 1 Abb., Ct. of App. Dec., (N. Y.), 439.

Applying this rule to the case under consideration, we find that the parties reduced their agreement to writing, and that the agreement was fully performed. Certainly, then, it does not lie in the mouth of Mr. Pery, Senior, to say that the written agreement was not as good for him as he expected, &c.

But if he had any claim, he is not a party to this action, nor represented here.

This disposes of the question so far as he is concerned.

(*b.*) Let us look for a moment, then, at the position of Paul R. G. Pery. We say thathe was not a party to the negotiations or agreement. He was, in no event, to receive any portion of the money or estate. Therefore, he can have suffered no damage. It made no difference to him whether Madame Jumel did as she agreed to, or not.

But, to set the question entirely at rest, Paul R. G. Pery, while on the stand as a witness, swore that he had an affection for the girl (Mary Jumel Chase), and would, most undoubtedly, have married her without any money. (See page 101, folio 270, printed case).

If, then, he would have married her without money, certainly it cannot be said that the pretended representations of Madame Jumel as to the amount of her property. induced him to marry the girl.

This disposes of the question so far as Paul R. G. Pery and his father are concerned, and narrows the inquiry down to Eliza Jumel Chase (now Pery), the only remaining party to the alleged contract or agreement.

Has she any claim upon the estate of Eliza B. Jumel, by reason of that alleged contract?

If she has, it must be based upon one of three grounds, viz., 1st. That she has suffered damages by reason of false and fraudulent representations, which induced her to enter into the contract, or, 2d. That she has suffered damages by the breach of the contract; or, 3d. That she is entitled to a specific performance, in which event she will be entitled to recover a certain amount now due under the contract.

Let us examine them in their order. To sustain the first, she must show four things.—First, the representations; second, that they were false, and were known to be false by the person making them, and were made with the intent to cheat, deceive and defraud her; third, that she believed them to be true, and, relying upon them, she was induced to pay out something or to part with something of value; and, fourth, that she has suffered damage.

She has failed entirely on each point, except, possibly, the first. There is no proof that the representations were false, and especially that Madam Jumel knew them to be false. The most that Madam Jumel represented was, that her property might be estimated at two millions of dollars. In that, she might honestly have been mistaken.

With reference to the third, there is also an entire absence of proof. She does not swear that she believed the representations to be true, or that she was in any manner influenced by them, except possibly the statement at folio 276, on page 104, where she says that the receiving a certain amount of money immediately into her hands operated on her as an inducement to marry. At folio 279, page 105, she says, that the 5,000 francs was what she meant as having influenced her, and there is no proof that any representations as to the value of Mrs. Jumel's property influenced her. Nothing but the 5,000 francs influenced her, and that she received.

As to the fourth and last, there is still greater weakness of proof, viz., as to her damages. She does not show she was damaged by the representations.

All she parted with, was her hand. What that hand would have been worth to her, no one can tell, as no proof was offered. In fact, there is nothing for the Court to take hold of in order to ascertain the damages. It seems like trifling with the Court to discuss this further.

With reference to the second ground on which she might found her claim, viz.: damages for breach of the contract, we can simply repeat what was said with reference to John Edward Pery (see page 56), that the only contract entered into was the one of July 5th, by which Mrs. Jumel agreed to pay 5,000 francs per annum. The letters are mere unaccepted propositions, and form no part of the contract, while the contract or agreement of July 5th, it is admitted, was fully carried out and performed by Mrs. Jumel. This ground is also untenable, by reason of her failure to prove damages, and of her failure to make a demand for performance, as no action for breach of contract lies without first making demand for performance.

Again, by an examination of the letters themselves, it will be seen that Mrs. Jumel does not make a promise to do or perform any act, or to pay or give any money upon condition that Eliza Jumel Chase shall marry, or shall perform any other act. The marriage was not a condition precedent to the providing for her by will. Mrs. Jumel says that she intends to do that in any event. The marriage was not, therefore, a part performance of the contract, as was contended for by appellees below.

Mrs. Jumel does say in the first letter that in case Eliza is happy, &c., she intends to advance her beyond the share, &c., but that evidently refers to the 5,000 francs just spoken of.

Finally, we will look for a moment at this claim as based upon the last ground, viz: An action for specific performance. The same argument used in reference to the second ground will apply here, *i. e.* that there is but one contract shown, and that one has been fully performed; and that there can be no specific performance, even of the alleged contract, admitting it to exist. The contract as claimed was that Mrs. Jumel would make a testamentary disposition in favor of Miss Chase. She died without making any will, and, of course, the Court cannot now recall life for the purpose of compelling a specific performance, nor can it make a will for her. Her only remedy, if any, is upon the second ground and that we have examined.

XIII.

A promise or agreement to provide by will or to give another by will, is not binding and cannot be enforced either in law or in equity.

XIV.

If Eliza Jumel Pery has any claim whatever, arising out of the marriage, letters, or treaty or agreement, so called, it is one that can only be asserted in a Court of law, in an action against Madame Jumel's administrators. She has complete remedy at law, and, while she has, equity will not interfere.

XV.

Even an action for damages for false and fraudulent representations, is a common law action, and not a proper subject for a Court of Equity.

XVI.

In the foregoing observations, it will be seen, that they have been made upon the assumption that the laws and decisions of the State of New York must govern in determining this point.

It will be borne in mind that this treaty or agreement was made in France, but as we understand the elementary writers and the adjudicated cases, there is no question that the laws of the State of New York must govern.

Greenleaf says on this point, Redfield's Edition, vol. 1, page 532, § 486: "In regard to *foreign laws*, the established doctrine now is that no Court takes judicial notice of the laws of a foreign country, but they must be proved as facts." And, in § 488:

"In many cases it may be said that in the absence of all proof the Court will presume that the foreign law is the same as that of the forum."

See also upon this point

Rape *vs.* Heaton, 9 Wis., 328.
Green *vs.* Rugley, 23 Texas, 539.
Cox *vs.* Monrow, 14 Ark., 603.
Warren *vs.* Lusk, 16 Mo., 102.
Sharp *vs.* Sharp, 35 Ala., 574.

(*a.*) No agreement is valid or can be enforced except there be a consideration therefor, or unless one of the parties performs his part. With reference to these letters there was no consideration and no condition for Eliza Jumel Pery to perform, so that they cannot constitute a valid agreement.

XVII.

We come properly now to the consideration of the question as to the relief prayed for in the complaint and granted by the decree, with reference to

the injunction and the judgment for $2,500 against the appellant.

(*a.*) If the positions heretofore taken by us, or any of them, are correct, viz., that the power of appointment merged in the fee; or that the power of sale overrode all other powers, and when exercised superseded the appointment; or that the appointment lapsed by reason of the death of Mary Jumel Bownes in the lifetime of Eliza B. Jumel; or that under the Revised Statutes of the State of New York, Eliza B. Jumel became the owner in fee; then, as a matter of course, the injunction and the judgment for $2,500, and in fact the whole decree, must be reversed, and judgment absolute granted for the appellant.

(*b.*) But, supposing our position with reference to the above points is untenable, and this Court should find itself unable to agree with us on those points, the question then naturally presents itself as to whether, in that event, the judgment or injunction can be sustained. It seems to us not.

XVIII.

The estate, right, title or interest which Mary Jumel Bownes or her heirs, the appellees, Eliza Jumel Pery and William J. Chase, had in the lands was a legal right, estate, or interest (if any).

(*a*). Under the laws as they stood prior to the adoption of the Revised Statutes in 1830, when an appointment was made by deed, as in this case, in law, it referred back to the trust deed itself, and was to be read and treated in all respects as a part thereof, and the appointee's interest or estate stood

the same as though it had been conveyed or created by the trust deed itself.

Sanders on Uses and Trusts, vol. 2, p. 87.
Willard on Real Estate, p. 268.

(*b*). Under the Revised Statutes the estate or interest of Mary Jumel Bownes, if theretofore simply equitable, became a vested legal estate.

"Uses and trusts, except as authorized and modified in this article, are abolished, and every estate and interest in lands shall be deemed a legal right, cognizable as such in the Courts of law, except when otherwise provided in this chapter."

Vol. III., page 728, § 45.

Nothing could be plainer than the words of this statute. If Mary Jumel Bownes had any *interest* in the lands, that interest was made a legal right.

Then, to save any question, the Legislature adds that it "shall be cognizable as such in the Courts of law."

At this time the common law practice existed in the State of New York, and in an action at law an equitable defense could not be interposed. The statute seems to have been passed to meet just such an emergency as this, viz., to allow a person occupying the position which Mary Jumel Bownes claims to have occupied under the trust deed and appointment, to assert, in an action, at law her title or interest, whatever it might be.

It seems to us that the appellees must take one of two positions herein, either first that Mary Jumel Bownes had no interest whatever in the lands, in which event they have no standing either in a court of law or equity, their whole case falling from under them; or, second, that she had an interest, in which event, by the section of the Revised Statutes above referred to, it was made a legal right, cognizable in a court of law, and therefore they have no right in

a court of equity, as equity will never interfere where the party has a clear legal remedy.

The bill should have been, for the reasons above stated, dismissed; and the Circuit Court having failed so to do, this Court should reverse its decree.

The views above expressed are upon the theory that the appellees are right in claiming that the appointment was in all things valid, did not merge, or lapse, and was not defeated by the subsequent exercise of the power of sale, or by the provisions of the Revised Statutes. Even admitting all they claim, still we insist that they have no standing in a court of equity.

(c.) The matter then stood, assuming the appointment to be valid, as follows: Mary Jumel Bownes took an estate in remainder in fee, subject to being divested, as hereinbefore stated. If Mary Jumel Bownes occupied that position, then Eliza B. Jumel had no more power, authority or right to convey away the remainder of Mary Jumel Bownes than any stranger had. Her deed would convey her own interest, but could not in any event dispose of, or interfere with, the remainder of Mary Jumel Bownes and her heirs. It is as though A. conveys the property of B. and receives the purchase price. He has done B. no injury whatever; he has simply committed a fraud upon the purchaser, and the latter would have his remedy as against A. But B. has no remedy as against A. for the simple reason that he has not been injured, and has no grievance to be remedied. The land remains his, the same, notwithstanding the void deed of A. He has not even a right in a Court of Equity to remove the deed as a cloud upon his title, for, upon its face it does not purport to be by B. or his authority, and so is not even a cloud upon his title.

Mr. Martin, Mr. Kingsland, Mr. Hamilton and Mr. Phillipon may have their remedy against the representatives of Mrs. Jumel, but not Mary Jumel Bownes or her heirs.

(*d.*) But in order to remove any possible question upon this subject, we again refer to the Revised Statutes, vol. 3, page 723, §§ 8 and 13, and page 725, §§ 32 and 33, which are as follows:

§ 8. "An estate in expectancy is where the right to the possession is postponed to a future period."

§ 13. "Future estates are either vested or contingent. They are vested when there is a person in being, who would have an immediate right to the possession of the lands, upon the ceasing of the intermediate or precedent estate."

§ 32. "No expectant estate can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender, merger or otherwise."

§ 33. "The last preceding section shall not be construed to prevent an expectant estate from being defeated in any manner, or by any act or means which the party creating such estate shall, in the creation thereof, have provided or authorized."

Briefly, then, Mary Jumel Bowne's interest (if anything) was an expectant estate. It was a vested estate, and it could not be defeated by any act or alienation of Eliza B. Jumel, who held the intermediate estate.

If it could not be defeated by any act of Eliza B. Jumel, then Mary Jumel Bownes, or her heirs (provided the appointment is good, not merged, lapsed, or affected by the subsequent power of sale, or the Revised Statutes, giving Eliza B. Jumel an absolute fee), are now the absolute owners of the fee of all the lands covered by the appointment, including the land purchased by Messrs. Martin and Kingsland, and at law entitled to the possession thereof.

But what possible claim can they have against the appellant by reason of the act of Eliza B. Jumel, his mother, in pretending to sell the expectant estate of Mary Jumel Bownes? Their property is there. and they are in the possession of

the great bulk of it. If Mr. Martin or Mr. Kingsland are on appellees' property, let them assert their right to it, and eject Messrs. Martin and Kingsland, but why trouble the appellant? He cannot aid them in any manner in getting possession of their property.

It seems to us that the appellees' claim for damages was simply ridiculous, and that that portion of the decree awarding them damages was entirely unauthorized, and cannot for a moment stand the light of an examination in this Court.

(*e.*) Eliza B. Jumel, if she had but a life estate, with the remainder in Mary Jumel Bownes, could convey her life estate and nothing more, and in her conveyance, even though she pretended to convey the remainder, still no title would pass.

Moore *vs.* Littel, 41 N. Y., 66–78.

(*f.*) Let us, however, for the sake of the argument, assume that Mr. Kingsland and Mr. Martin were innocent purchasers for value, and that, for that reason Madam Jumel was enabled to convey to them the remainder of Mary Jumel Bownes, as she professed to do. The proposition is absurd upon its face, for the reason that the trust deeds and appointment were on record, and so, notice to the world; but it was not too absurd for consideration below, and so we take the liberty of presenting it here.

If this is correct, and Eliza B. Jumel conveyed a good title to this property to Mr. Martin and Mr. Kingsland, when she had no right to, and stood in a position of trust or confidence towards Mary Jumel Bowne's and her heirs, then she committed a fraud upon them, and they are entitled to damages.

The Court held below that the damages were the value of the property at the time of trial. Suppose that to be correct, then the matter stands as follows:

The value of Mr. Kingsland's lot was $7,500 per acre, and consisted of 36 acres	$270,000.00
Mr. Martin's land lay east of the Kingsbridge road, consisting of about 3 acres, and was worth about $3,750 per acre	11,250.00
(See testimony of Mr. Smith, pages 160 and 161.)	
Total	$281,250.00
On the other hand, we have lots 7, 9, 10, 11, 12, 13, 14 and 15, which were not covered by the appointment, and in which neither Mary Jumel Bownes or her heirs ever had, or now have, any interest or right whatever. These lots were owned by Eliza B. Jumel, and occupied by her for more than 30 years. They, together, comprise a little over 65 acres, lying east of Kingsbridge road, and were worth $3,750 per acre, as appears by the testimony of Mr. Smith, above referred to	$243,750.00
By the decree, it appears that the personal property which Madam Jumel left at her death, and which appellee's took, was	28,624.00
The value of the Saratoga and the 7th avenue property, as appears by the decree, which Madam Jumel owned at the time of her death, is	68,700.00
(See page 246.)	
	$381,074.00

We have, then, this condition of affairs, the appellees are in the possession of $341,074.00 of property, real and personal, belonging to the ap-

pellant (for the purposes of this action he is admitted to be the son of Eliza B. Jumel, and so the same passed to him upon her death), a portion of which being real estate, he has brought his action to recover possession of it. Thereupon the appellees go into a Court of Equity, and complain that appellant has brought his action at law, that his mother committed a fraud upon them whereby they have suffered damages to the amount of $281,250.00, and ask the Court to restrain the appellant from prosecuting his action. In any event, they have $59,824 of appellant's property in their hands, in excess of the claim they have against him.

If they ask equity they should first do equity, by delivering, or offering to deliver to the appellant, his property, or at the least paying, or offering to pay to him the excess of $59,824.

(*g.*) Let us look at this for a moment in a different light:

The appellees received from the city for parts of lots 7, 9, 10, 11, 12, 13, 14 and 15 (the property of the appellant), taken by the city	$240,000
(See page 198, testimony of Mr. Chase.)	
The personal property which the appellees have taken, is	28,624
The appellees sold the Seventh avenue property (which belonged to the appellant), to Mr. Covert, for	24,000
(See page 47.)	
Making a total of	$292,624
The value of property sold to Mr. Martin and Mr. Kingsland, is	$281,250

Leaving a balance of $11,374 which appellees have already received in excess of any possible claim against the appellant! Surely they must pay this to the appellant, and put him into possession of the Saratoga property, and the residue of lots 7, 9, 10, 11, 12, 13, 14 and 15, before they can ask any relief in a Court of Equity. In this way, only, can their hands be made clean enough to warrant their appearance in a Court of Equity.

XIX.

The objections to a Court of Equity interfering to aid the appellees who have not only failed to do equity, but are actually now holding and enjoying property of the appellant, of far greater value than any possible claim which they can have against him, apply with equal force to an injunction. The injunction herein should not for those reasons be sustained.

If the injunction is sustained, the appellees have and hold $59,824 of the appellant's property, in excess of any possible claim that they can have against him, while a Court of Equity stands behind them in their iniquitous proceeding, and forbids the appellant the privilege of compelling them to disgorge! Certainly this Court cannot sustain an injunction under such circumstances as those stated.

XX.

Another very serious objection to the granting or sustaining of the injunction, so far as it restrains the prosecution of the ejectment suit, is that the statutes of the State of New York give the plaintiff in that suit (the appellant here) the absolute

right, on payment of costs, to have a new trial of the cause. The statute is as follows (referring to a judgment in an action of ejectment):

"The Court, in which such judgment shall be rendered, at any time within three years thereafter, upon application of the party against whom the same was rendered, his heirs or assigns, and upon payment of all costs and damages recovered thereby, shall vacate such judgment, and grant a new trial in such cause."

Revised Statutes, 6th ed. vol. 3, page 576, § 33 (old section 37).

XXI.

In an action of ejectment in the State of New York, the defendant is at liberty to avail himself of every defence which he has, equitable as well as legal.

Crary *vs.* Goodman, 12 N. Y., 266.
Thurman *vs.* Anderson, 30 Barb, 621.
McCray *vs.* McCray, 30 Barb, 633.
Dodge *vs.* Wellman, 1 Abb., Ct. of App. Dec.

XXII.

The Revised Statutes of the United States, p. 173, § 914, provide that the practice, pleadings, modes of proceeding, etc., in the Circuit Court of the United States, shall be made to conform, etc., to the practice, pleadings, modes of proceeding, etc., in like causes in the Courts of record of the State within which such Circuit is held.

On the trial of the action at law in ejectment, which is enjoined by the decree in equity herein,

the judge, who presided at the trial of the said action, evidently relying upon this statute, and believing that the same was binding upon him, so far as the trial of that cause was concerned, and that under that statute he was bound to allow the defendants therein to interpose their equitable defefenses to the said action of ejectment, permitted the defendant to prove by way of defense all of his equitable defenses, and the said defendant did set up, and prove, in that action, every equitable fact substantially, which has been proven in this suit in equity.

If the presiding justice on that trial was right, then the appellees had no necessity to go into a Court of Equity for relief, as they had obtained ample relief in the Court of law.

On the trial of the action of ejectment, the counsel for plaintiff (the appellant here) objected to the defendant (one of the appellees here) being allowed to prove his so called equitable defenses.

The Court held that the defendant had the right to interpose his so-called equitable defenses.

He did interpose thereon, and succeeded on the trial.

Notwithstanding this, the defendant in this suit joined with him his son and daughter, and on the same day commenced this suit in equity, in the same Court, setting up the very matters which he had just successfully interposed as his equitable defenses to the action at law, and claiming that he had no remedy at law, and asking the Court of Equity *to interpose its strong* arm in his behalf, which it did, and enjoind the appellant from prosecuting any action at law.

Certainly this looks to us like trifling with justice, and like an imposition upon the Court.

XXIII.

As a general rule, a defendant having an equitable defense to an action, is bound to interpose it,

and cannot bring a separate action merely for the purpose of restraining the prosecution of another action pending in the same Court.

Winifield *vs.* Bacon, 24 Barb. 154.

XXIV.

The Circuit Court had already passed upon these same questions in the action of ejectment, and its decision was binding upon all of the parties to the action, until reversed by this Court; and the judgment record in that case, which the appellant introduced in evidence, was a complete bar to this suit.

See judgment record pages 213 to 224, especially folio 654, page 223.

(*a.*) So far as the defense, with reference to the appointment is concerned, the presiding justice, at the trial of the action of ejectment, allowed the defendant to prove his defense, and then directed the jury to find that "Eliza B. Jumel, at the time of her death, had no estate or interest in the lands claimed, which was descendable to her heirs," evidently, upon the theory, that it was a good defense at law, as in fact it is, if it is any defense at all.

There would be no meaning in what the judge said otherwise. If he considered the legal estate in Eliza B. Jumel, and the equitable right in Mary Jumel Bowne's heirs, it would have been untrue and senseless for him to say that Eliza B. Jumel had no estate descendable, &c., for the legal estate would have descended.

What he did mean and decide was, that the legal estate was in Mary Jumel Bowne's heirs, and that Eliza B. Jumel's estate being for life, ceased

upon her death, and so there was nothing descendable.

(*b.*) This question was then *res adjudicata*.

XXV.

The judgment and decree of the Circuit Court should be reversed with costs, and judgment absolute directed in favor of the appellant.

Respectfully submitted,

MERRITT E. SAWYER,

Solicitor for Appellant.

SUPREME COURT

OF THE UNITED STATES.

No. 154.

GEORGE W. BOWEN,

Appellant,

vs.

NELSON CHASE, et al.,

Appellees.

BRIEF OF APPELLEES.

JAMES C. CARTER,

Of Counsel for Appellees.

New York:
E. WELLS SACKETT & BRO., LAW, BOOK AND JOB PRINTERS,
CORNER WILLIAM AND PINE STREETS.
1876.

Supreme Court of the United States,

IN EQUITY.

GEORGE W. BOWEN,
Appellant,
vs.
NELSON CHASE and Others.
No. 154.

At Law.

GEORGE W. BOWEN,
Plaintiff in Error,
vs.
NELSON CHASE.
No. 16.

PRELIMINARY STATEMENT.

The suits above entitled are but different branches of the same controversy, relating to what is commonly known in the City of New York as the "Jumel Estate"; and, although the equity appeal came later than the writ of error, the Court has directed it to be *first* argued, on the suggestion that the whole controversy might, perhaps, be practically determined by the decision upon that appeal.

The equity suit involves a consideration of the nature and character of the litigation set on foot and prosecuted by the action at law, and there is a

stipulation that upon the argument of the *appeal*, the whole of the bill of exceptions brought up by the *writ of error* may be referred to. (Record of Equity Appeal, p. 231.)

These circumstances seem to make it suitable that a brief statement of the *whole* controversy should accompany the brief prepared for the argument of the appeal.

The action at law was the one first brought, and was an action in the nature of ejectment originally commenced on the 6th of January, 1870, in the Court of Common Pleas for the City and County of New York, and subsequently removed by the plaintiff himself to the Circuit Court of the United States for the Southern District of New York, under the provisions of the Act of July 27th, 1866.

In that action the plaintiff sought to recover a large and valuable real property, on the allegations that one Eliza B. Jumel died seised thereof in 1865, intestate, and without leaving any legitimate children; that the plaintiff was her illegitimate and only son, and, by the laws of New York, the sole inheritor of her real property in that State. The suit was brought against Nelson Chase as being the person in possession and claiming title.

The bill in equity, which is *first* above entitled, was filed in the same Court by the defendant in the ejectment, together with his daughter Eliza Jumel Pery and her husband, and his son, William Inglis Chase, against the plaintiff in the ejectment. It alleges that the complainants therein, if they do not possess a full *legal* title to the property sought to be recovered by the plaintiff in the ejectment suit—a point which may be open to some question—have a full and complete *equitable* title thereto; and, consequently, that if the claimant Bowen really and in truth were what he pretends to be, the heir at law of Eliza B. Jumel, and should, as such, be able to recover the property by an action at law, he would recover but a mere naked legal title without any equitable or

beneficial interest, and would be compellable in equity to convey this legal title to the complainants in the equity suit, the parties in whom the entire equitable interest is vested. The bill also concerns itself with other property sought to be recovered by the claimant Bowen in other ejectment suits, and asserts that as to such property he would be compellable in equity, if he could maintain his alleged title at law, to apply the whole of it to the benefit of the complainants to satisfy obligations incurred by said Eliza B. Jumel in her lifetime, and binding upon her heirs at law. Other grounds are set forth in the bill showing it to be in a high degree vexatious and inequitable to allow the plaintiff Bowen to prosecute suits at law to recover this property, if, as alleged, any recovery by him would be wholly unsubstantial.

On the trial of the ejectment suit *two principal* questions were agitated.

First. A question of fact, concerning the pretences of, the plaintiff Bowen to heirship. These pretences were utterly denied by the defendant; and upon this issue many witnesses were examined.

Second. It was maintained by the defendant that under a series of conveyances affecting the property, Eliza B. Jumel had no legal or equitable estate therein, except *for her life*; the remainder being vested in the two children above mentioned of Nelson Chase, who had, after the death of Eliza B. Jumel, for certain purposes more particularly set forth in a certain instrument of family settlement, conveyed the legal title to their father. This claim of the defendant, turning as it did wholly upon the effect of certain conveyances, was conceded by both parties to raise a question of law only.

The question of fact was submitted to the jury under instructions by the Court, to the effect that, if they found the plaintiff to be, as he claimed, the son of Eliza B. Jumel, they should find a general verdict in his favor. The question of law was disposed of by the Judge, by a direction to the jury to find *specially*, that Eliza B. Jumel left no estate descendible to her heirs. This mode of disposing of both questions was acceptable to both parties. It enabled the principal question of law to be raised before an appellate tribunal at the same time and together with any questions arising upon other rulings of the Court upon questions of evidence, &c.

The jury found a general verdict for the defendant; thus determining against the claim of heirship set up by the plaintiff; and at the same time found specially, in accordance with the instructions of the Court, that Eliza B. Jumel left no estate in the property descendible to her heirs. Judgment was entered for the defendant upon this verdict, and from this judgment the plaintiff sued out of this Court his present writ of error.

There had been a previous trial of the action resulting in a disagreement of the jury; and for the second trial, a special, or *struck* jury, was asked for by the defendant and granted. Both the trials were exceedingly lengthy and laborious, and exhibited some novel incidents.

The plaintiff, Bowen, had instituted other suits for the recovery of other pieces of property; and, for the purpose of bringing a controversy so protracted and burdensome to a close, the bill in equity was filed before the rendition of the verdict upon the second trial. It sought a perpetual injunction against the further prosecution of suits at law by the plaintiff, Bowen, (except any writ of error he might desire in order to review the trial already had), and certain special relief to be noticed hereafter.

After a hearing before Mr. Justice Blatchford, a decree was made sustaining the allegations of the

bill, and granting the injunction sought for, and from this decree the present appeal, which is first above entitled, is taken to this Court.

It will be perceived from the foregoing statement that it may not be necessary for the Court to consider *all* (perhaps not any) of the questions raised by the writ of error. If the conveyances affecting the title to the property are such that Eliza B. Jumel had no descendible estate therein according to the special finding of the jury, the defendant would be entitled to judgment on such special finding; and even if any error were committed by the Court in any ruling upon points of evidence, or in the charge, having reference to the question of fact arising upon the plaintiff's claim that he was Madame Jumel's son, it would be absolutely innocuous, and the judgment should be affirmed.

If, however, it should be thought that, by reason of any conveyances affecting the property, the *fee* had become vested in Eliza B. Jumel, but the entire equitable ownership after her death was yet settled upon the children of Nelson Chase, or if it were a *doubtful* question whether the title of such children after her death were *legal* or *equitable*, the decree in the equity suit would be well founded, and that decree should be affirmed; a disposition which would determine the merits of the controversy so far as affects the property sought to be recovered by the ejectment suit.

It is only in the event that the conclusion should be reached, that the children of Nelson Chase took no title, legal or equitable, under the conveyances, but that Eliza B. Jumel had the entire legal and equitable ownership, that the question whether the plaintiff Bowen was her son becomes material; unless, indeed, the minor consideration of the *costs* should be deemed sufficient to require the Court to examine all the numerous questions raised by the bill of exceptions.

Enough has been said to indicate generally the nature of the two suits and their relation to each

other. For a just apprehension of the principal features of a somewhat remarkable controversy a more extended statement, embracing some of the leading incidents of the personal and family history of the more prominent characters of the drama, is requisite.

The lady, who, during many years in the city of New York, enjoyed much celebrity as Madame Jumel, was married in 1804, when a young woman and in humble condition, to Stephen Jumel, a wealthy French merchant of that city. Several years after this marriage, Jumel purchased a large and valuable estate, situated at the northerly, and then and still, wholly rural part of the Island of Manhattan, upon which was an elegant mansion, and there took up his residence. He continued to live there, excepting a period of some ten years or more, during which he was sojourning in France, until his death, which occurred in 1832. His widow continued to reside there, with the exception also of some periods of absence in Europe, until her death in 1865. She was married a second time, in the year 1833, to the celebrated Aaron Burr; but this union was terminated by a divorce, granted at her instance, in 1836.

A sister, named Maria, was living in New York during the whole of Madame Jumel's residence in that city down to the time of the death of the former in 1850. This sister, it would appear, had been married as early, or earlier, than 1801, though nothing is now known of the husband, and had by such marriage one daughter, whose name was Mary Bowne, or, as it is found in the family record, Mary Ann Walter Bowne. Afterwards, and in 1805, she married a second husband, a man of humble pecuniary condition, one William Jones, by whom she had four children, who, at the time of the trials, were still living. This sister and her five children are the only kindred ever known of Madame Jumel, during her residence in New York, unless the pretensions of the claimant, Bowen, are well founded. The relation-

ship between Madame Jumel and Mrs. Maria Jones was perfectly recognized, and never disputed, until it suited the purposes of various claimants after the death of Madame Jumel to call it in question. There is no evidence in these cases throwing any doubt upon it and it is, indeed, quite indisputable.

The daughter of Maria, born prior to her marriage to Jones, as before mentioned, was, when but a few years old, taken by Stephen and Madame Jumel into their family as one of its members; their names were bestowed upon her, (she was called Mary Jumel, or Mary Eliza Jumel), and she was ever afterwards, until her marriage, tenderly supported, educated and cared for by them, and in all respects treated as their daughter. They evidently designed that she should be their daughter by adoption, and the successor and heir to their estates. She became in 1832 the wife of Nelson Chase, one of the complainants, and died in 1843, leaving two children, Eliza Jumel Chase, and William Inglis Chase, who are joined, the former together with her husband, as complainants with their father.

It is proper to say that, in stating as above, that Mary Jumel was the daughter of Madame Jumel's sister, we have supposed the *fact* to be in accordance with the general statement and belief in the families of Madame Jumel and her sister, Mrs. Jones. At the same time, we may add that the *fact* is not certainly known: and there are evidences, vastly more impressive and convincing than any brought forward by the claimant Bowen to support his pretences, which have led to the conjecture, perhaps the belief, by some persons that she was in fact, the daughter of Stephen and Madame Jumel. The question, if it be one, is not material in the present controversy.

After the death of Mrs. Chase, her husband and his two children took up their residence with Madame Jumel at the family mansion. She received, supported, brought up and educated these children as part of her family, taking them with her on visits

to Europe, treating them in all respects as her grand-children, and sometimes calling them so, and, at other times, her grand niece and grand nephew. Eliza thus remained with her until her marriage, which was negotiated in 1854, by Madame Jumel, and William until he was nineteen years of age.

After the death of Madame Jumel the complainant, Nelson Chase, who had, with the exception of brief intervals, continued, since the death of his wife, to reside with her, went into the occupation of the family mansion and other property and has ever since continued, together with his children, in such occupation.

Their title is briefly this. Prior to the death of Stephen Jumel certain conveyances, still in existence, had been executed by which the greater part of his real estate was vested in one Michael Werckmeister upon certain trusts. The complainants assert that by similar conveyances, not now to be found, the residue of his real estate was also conveyed to the same Werckmeister upon like trusts. These trusts were, speaking generally, to permit Madame Jumel to have the rents and profits during her life, to convey to such persons as she should by her last will and testament designate and appoint, and, in default of such appointment, to convey to Stephen Jumel for life, and upon his death, should he survive her, otherwise, immediately upon her death, to convey to the adopted daughter, Mary Jumel, and her heirs in fee.

It is supposed by the complainants that under this settlement a remainder in fee was vested in Mrs. Chase and her heirs, and that upon the death of Madame Jumel, neither Stephen Jumel nor Mrs. Chase being then alive, the remainder took effect in the two children of the latter. Whether their estate was legal or equitable will be considered hereafter.

By an instrument executed shortly after the death of Madame Jumel, her four nephews and nieces, the children of her sister Maria, sold and conveyed to

Nelson Chase, in consideration of the sum of forty thousand dollars, all the right, title and interest, except a small reservation, which, as heirs at law, next of kin, or otherwise, they had or might have in the estate of Madame Jumel, and thus the title to any real or personal property which she had left was vested in the complainant Nelson Chase. This covered two lots of land in New York city, and some considerable property in Saratoga, which she had acquired by purchase after the death of Stephen Jumel. An instrument of family settlement was subsequently executed between Mr. Chase and his children, whereby the title to the *whole* property was vested in him, in trust, however, for the benefit of the parties to the settlement in the manner therein expressed.

In this manner, according to the view of the complainants, all the property to which either of the two suits relate, became perfectly vested in Mr. Chase and his said two children. No claim or pretence had as yet been made by George W. Bowen, or any other person, of relationship to Madame Jumel, or that these four nephews and nieces were not her sole heirs at law.

Madame Jumel had in her lifetime, and before she had reached advanced age, executed several wills which, it would appear, had been destroyed by her. Drafts of these, preserved by the professional advisers who drew them, were given in evidence on the trial at law by the defendant Chase. It is scarcely necessary to add that they gave her property, except some few legacies, to the two children, and made no mention of the claimant George W. Bowen. Soon after her death, however, a paper was set up by certain persons, named therein as executors, as being her will, whereby she disposed of her property mainly to charitable institutions and a clergyman. It purported to have been executed about two years before her death. She was at that time exceedingly infirm in body and mind, and had conceived, as was alleg-

ed, an insane and unnatural antipathy towards the children whom she had theretofore tenderly cherished and treated as her own.

An action was thereupon brought by the complainants together with the nephews and nieces above mentioned, based upon the legal title of heirs at law, seeking to have this pretended will declared void. A decree to that effect could easily have been obtained against whatever opposition. Those interested in maintaining it received from Mr. Chase the sum of $88,500, and abandoned the contest. The verdict of a jury was readily given condemning the alleged will, and the decree sought for obtained thereon.

This suit was like the box of Pandora. Industrious counsel, enlisted in defence of the alleged will, acting upon some vague hint, conceived the notion that if they could successfully overthrow the relationship, theretofore unquestioned, between Madame Jumel and Mrs. Maria Jones, they could avoid a contest upon the merits of the paper by plucking away the right of the plaintiffs in the suit to attack it. Learning that Madame Jumel was born in Providence, and that her maiden name was Bowen, they instituted in that city and its neighborhood a tireless inquiry into her pedigree, and gave out that they were in search of heirs at law to her supposed vast estate. The consequence may easily be imagined. The professional inquirers, really seeking for the truth, discovered curious but indubitable proofs establishing the relationship they sought to disprove. They retired from the field satisfied. Not so, however, with the swarm of pretenders which they routed up in the progress of their investigations. There seems to be a distinct tendency in human nature, not sufficiently noticed hitherto, inclining poor people to believe themselves the inheritors of great estates—a belief which thrives, not upon evidence, but upon the want of it. A statement of the different stocks upon which Madame Jumel was grafted would be amusing. One only, *at*

the most, could be true ; but all were supported by an equal weight of evidence. If there be any virtue in the solemn statements of deceased grandmothers, many of these claims could not be resisted. One element of weakness was common to all of them—they were for *sale* ; and, as the market was glutted, most of them were suffered to perish for want of a purchaser. *Syndicates* were, however, made up for several, always, of course, including one or more lawyers, and, as soon as the will was set aside, *heirs at law* appeared in great force. In dealing with these attacks it may easily be imagined that neither the complainants nor the courts, have been left without occupation.

In fact, however, one claim only besides the present has been made the subject of serious litigation. In other cases the weak point of the claim has been that the effort was to establish a *collateral legitimate* heirship by assigning to Madame Jumel and the claimants a *common ancestor*. Such efforts were defeated by showing, by better evidence than oral hearsay, who the claimants really *were*, and from whom descended. It was possible in this way to show the difference in the stocks. The present claimant possesses an advantage which avoids the rock upon which others split. He starts with the assertion that he is *filius nullius* in the law, accepts Madame Jumel's true pedigree, and claims that he is the fruit of her body. If it be difficult, as it must be, for a bastard of eighty-five to furnish direct proof from whose womb he proceeded, it is equally difficult to meet any proof which may be brought, imputing him to one woman, by direct evidence that he was born of another. It was with conscious and just triumph that this claimant's counsel exclaimed to the jury on the trial of the ejectment, "If he is not the son of Madame Jumel, whose son is he?"

Nothing has been said concerning the parentage and early history of Madame Jumel. It may be

thought immaterial; but upon the trial at law the claimant introduced certain pieces of evidence apparently for the purpose of adding to the infamy which his claim itself imputed to her, and sought, also, to draw in question the relationship between her and Mrs. Maria Jones. Some of this evidence appears in the bill of exceptions, and, without some explanation, might tend to confuse. Moreover, the character of the litigation at law, is one of the grounds upon which the intervention of a Court of Equity is invoked.

It does not distinctly appear in evidence, but it will not be regarded as improbable, that a proud and showy woman like Madame Jumel, lifted by marriage into wealth and splendor, should practice reserve concerning the circumstances of her prior humble condition, especially if they were associated with wretchedness and misery. Such a disposition, surely, is no evidence of guilt. It tends rather to show a praiseworthy determination to rise above former low surroundings. The shades of oblivion had thus gathered around the early history of Madame Jumel and her sister Maria. The simple statement of their birth and parentage had been communicated and remembered in each of the families. That they were born in Providence; that their father was John Bowen, and their mother, before her marriage, was Phœbe Kelly; that they had a brother John, who died when young; that their father was lost at sea, and that their mother had subsequently married a man named Jonathan Clark, and the family had removed from Providence at an early period and dwelt in sundry places, among which was a forgotten town in North Carolina, where the mother and stepfather had both died, after which the daughters came to New York, was nearly all the knowledge which family tradition could furnish after the death of Madame Jumel in 1865.

The investigations of the diligent and skillful counsel above alluded to, who were employed to

defend the action brought to set aside the will, together with like researches undertaken by counsel on the opposite side, furnish an illustration, almost romantic, of the extent to which the oblivion, which envelopes every thing relating to common life in a period anterior to living memory, may be explored and illumined, when the misleading guides of hearsay and oral tradition are discarded, and truth is sought to be followed only by finding where she has here and there put down her foot and left an indelible mark. The principal results of these investigations have a pertinence which justifies a brief statement.

The disinclination, inherited from the mother country, on the part of towns in early times in New England, to allow poor persons to gain a settlement, led to the establishment of a jurisdiction in the town authorities, which was exercised often by compelling the appearance of such persons before the authorities, and their examination. Several such examinations of Phœbe Kelly and Jonathan Clark, before the town council of Providence, during the period between 1768 and 1792, were found among the ancient records of that place, which proved that the former married John Bowen, and had by him one son named John, and two daughters, Betsey and Polly, the familiar synonyms for Eliza and Maria ; that John died when quite young ; that after the death of her first husband she married Jonathan Clark, who had been an officer in the continental service, and who had then declined, it would appear, into a rather shiftless condition, and that in 1791 they were required to leave Providence, as not entitled to a settlement therein. The discovery, among some supposed worthless relics left by Mrs. Maria Jones in the possession of her children, of divers old documents, including a commission issued by the Continental Congress to Jonathan Clark, authenticated by the veritable signature of John Hancock, fully identified her as the Polly Bowen whose mother Clark had married. A receipt purporting

to be dated in Rutland, Aug. 7th, 1797, and signed by one Daniel Walker, led to establishing residence in the town of Rutland, Mass., in the most conclusive manner. After researches in several towns of that name, one Reuben Walker was found in Rutland, Mass., whose father, Daniel Walker, then long deceased, had in the last century kept a store in Rutland. His son, Daniel, had in his possession some of his father's old books, in one of which was found an account with Jonathan Clark, in the same handwriting with the signature of the receipt. The last entry in this account was of the same date as the receipt, and to the effect that the account was on that day settled in full.

What was perhaps most remarkable of all was the corroboration of the truth of the tradition of the residence and death in North Carolina of the mother and step-father of Madame Jumel and Mrs. Jones. A receipt to Jonathan Clark for a month's rent, signed by one Edward Griffin, found among the same family relics of Mrs. Jones, dated May 10, 1798., at "Williamston," without further specification of place, indicated that, at the time above mentioned, Clark was a tenant of one Edward Griffin; and a further old paper signed "Polly Bowen" and styled "the inventory of my goods and clothing robbed and stolen from me by Edward Griffin & Co., on July 4th, 1798" suggested that difficulty had arisen between the landlord and his tenants. A search made among the county records of Martin County, North Carolina, in which is a town called Williamston, revealed entries upon the docket of the County Court in the year 1798, showing that in July of that year Jonathan Clark and Phœbe, his wife, brought an action of trespass against one Edward Griffin, which suit, prior to the December term of the Court for that year, had abated by the deaths of both the plaintiffs. These discoveries proved that after the order of the town council of Providence in 1791, expelling Clark and his wife from Providence, the ex-

iles, with their family, migrated to various places until they died in North Carolina in 1798; and after that, the two young women, left in destitute circumstances, found their way eventually to New York, where they arrived about the beginning of the present century.

The plaintiff at the trial seemed to think that it would aid his pretences to throw discredit upon the character of her whom he claimed to be his mother, and for this purpose, apparently, introduced in evidence some of the Town Council records of Providence above referred to.

They undoubtedly show that Betsy and Polly Bowen were, at a very tender age, in poverty and misery, and surrounded by most unpropitious circumstances; but furnish no proof of crime. The presumption of innocence and virtue which the law, as well as charity, makes, in the absence of proof to the contrary, is strengthened and confirmed by the fact that no stain ever attached itself to the characters of either of these two females during their long lives in the City of New York.

The foregoing observations, designed as introductory only, are not, except so far as appears upon the face thereof, and, except as to matters of opinion or legal claim, will not, it is believed, be controverted. No references are therefore made to the records by way of proof. As to any material matters of fact in dispute between the parties, such references will be given hereafter. The argument of the appeal in the equity suit is first in order.

An *abstract*, with references to the record, shortly exhibiting the material allegations of the bill, and the mode in which they are dealt with by the answer, is contained in Appendix A.

The *general scope* of the bill may properly be here stated.

First. It sets forth the marriage of Stephen and Madame Jumel; the adoption into their family

of Mary Jumel Chase, as their intended heir and successor to their estates; the acquisition of certain lands by Stephen Jumel, and the eventual conveyance of all such lands to Michael Werckmeister, in trust, among other things, to convey them to such persons as Madame Jumel might appoint; and the subsequent execution by Madame Jumel of this power of appointment, by which she ordered and directed that the said Werckmeister and his heirs should convey the property to such persons as she should, *by her last will*, designate and, appoint; and, in default of such appointment, to Stephen Jumel for life; and, should he not survive her, to Mary Jumel Chase and her heirs in fee. It further sets forth the death, in 1832, of Stephen Jumel; the death of Mary Jumel Chase in 1843, leaving two children, Eliza and William, her surviving; and the death, intestate, of Madame Jumel in 1865, the trustee Werckmeister having then also died; the survival of the two children of Mrs. Chase, who are complainants in the action, and their conveyance of their title to their father, Nelson Chase, in trust for the benefit of them and him as therein expressed. It further alleges, that certain *tortious* conveyances were, subsequent to the death of Stephen Jumel, made by her and the trustee Werckmeister, combining to that end, which *may* have had the effect of vesting the mere legal title in Madame Jumel; but the bill charges that, if this be so, and such title has descended upon the claimant Bowen as heir at law, he has no beneficial interest in the property, and holds the legal title under an obligation to convey and assure it to said two children of Mrs. Chase, or their grantee, Nelson Chase.

The above is the title made by the bill of the children of Mrs. Chase to all the property in the City of New York. And as to this property the complainants insist that their title to the

relief prayed for is clear. If their estate is an *equitable* one, their right to such relief cannot be disputed. If it were a matter of *doubt*, whether it were *equitable* or *legal*, their right to the relief would be equally clear. If it were clearly a legal title, they have still a right to relief, growing out of the vexatious and oppressive nature of the litigation at law. If the title were, however, clearly a legal one, there would be no necessity for equitable relief, for the reason that the verdict and judgment at law would be confessedly unassailable, and would be a sufficient protection, so far as relates to this property.

Second. The bill sets forth the representations and contract made by Madame Jumel in bringing about the marriage of Eliza, one of the complainants, and the failure to comply therewith by Madame Jumel, and insists that by reason thereof Eliza became equitably entitled, upon the death of Madame Jumel, to the whole of her estate, real and personal, or to have the whole thereof applied towards satisfying the damages resulting from such non-compliance.

Third. The bill sets forth that Madame Jumel, after the death of her husband Stephen, combining with the trustee Werckmeister and others, effected conveyances of large parts of the real estate originally belonging to Stephen Jumel, and which had been settled as above mentioned upon Mary Jumel Chase and her children, to *bona fide purchasers*, and thereby defrauded the complainants, Eliza and William, of their estates in such lands, and thus came under an obligation to procure to be conveyed upon the same trusts the same lands, or lands of equal value; and that upon her death her real and personal representatives, whether heirs at law or next of

kin, devisees, legatees, executors or administrators, came under the same obligation, which is enforceable in equity, and that this claim has been in like manner conveyed to Nelson Chase in trust as above mentioned for the benefit of the complainants. It further sets forth that the personal estate of Madame Jumel has been fully administered, and all her debts and liabilities satisfied, save only the claims and demands of the said Eliza and William accruing as aforesaid, and that the only property belonging to her estate, which could pass by descent to her real or personal representatives, or be made chargeable with the payment of her debts and liabilities, is the residue of her personal estate, and the lands in Saratoga acquired by her as hereinbefore mentioned after the death of Stephen Jumel; and that the whole value of such personal estate and of such lands, taken together, is not, and never has been since her death, sufficient to pay and satisfy one-fifth part of such claims and demands of the said Eliza and William, arising from the fraudulent conveyance as aforesaid to *bona fide* purchasers of lands settled in trust for their benefit.

It is insisted that, if George W. Bowen has any title as heir at law, or otherwise, to the property so belonging to Madame Jumel at her death, it is the only property in the State of New York belonging to him, and is held by him under an obligation, enforceable in equity, to apply the whole of it towards the satisfaction and discharge of the claims and demands accruing to the said Eliza and William as aforesaid; and that this, together with the other matters alleged in the bill hereinafter mentioned entitle the complainants to the relief they seek in respect of the Saratoga property, which is the subject of other actions of ejectment brought by the said claimant and still pending.

Fourth. The bill also sets forth that, soon after the death of Madame Jumel, her four nephews and nieces, being the children of her deceased sister Maria Jones, namely, William B. Jones, Stephen Jumel Jones, Eliza Jumel Tranchell and Louisa Jumel Maddox, and who were her only legitimate heirs at law, conveyed to the complainant Nelson Chase all right, title and interest which they had or might have in her estate; which right, title and interest he holds for the benefit of himself and his said children; that thereafter the said complainant, with others, prosecuted the suit to set aside the pretended will hereinbefore mentioned, and obtained a decree to that effect, having first paid to the parties having an interest in supporting such will the sum of $88,500, upon which they abandoned their support of it. These allegations show that the complainants are clothed with all the rights of the legitimate heirs at law, and of the only heirs at law, unless the pretensions of the claimant Bowen have a foundation.

Fifth. The bill then sets forth a statement of the series of actions of ejectment brought by the defendant Bowen to recover various parts of the property to which the bill relates, and alleges that these actions were brought on the pretence that the said claimant was the illegitimate son of Madame Jumel, and as such her heir at law; all of which actions the complainant, Nelson Chase, has been obliged to assume the burden of defending. The bill proceeds to describe the nature and character of these litigations, with the view of showing that they are so extraordinary and burdensome, as well to the complainants as to the courts, as to furnish a ground for the intervention of equity, unless they involve something of substantial importance. These allegations, if true, show that these litigations present the following features:

1. That the claim of the plaintiff, as described by himself, is in a high degree improbable, and bears upon its face manifest indications of being a fabrication.

2. That it was brought and prosecuted under a champertous agreement with other persons who were to conduct the litigation and defray the expense thereof, and receive their reward, in case of success, by a partition of the recovery.

3. That the plaintiff and his confederates had associated with themselves divers desperate and vicious characters, ready to commit perjury for a price, and that some of them had already committed the most monstrous perjuries in his behalf, and with his knowledge; and that he had endeavored to fortify and strengthen such perjuries by his own evidence.

4 That these litigations thus set on foot and prosecuted, had been intolerably burdensome, vexatious and expensive.

5. That the claimant and those confederated with him had no hope of eventual success, but did entertain the hope, by embarrassing, the titles of the complainants, to extort a large sum of money as the price of a release from such embarrassments.

Sixth. The bill then insists that trials of the actions at law *are of no substantial importance or pecuniary consequence whatever.* That if the plaintiff really were what he pretends to be, the heir at law of Madame Jumel, he would be bound to convey in fee simple to the children of Nelson Chase, or to Nelson Chase himself, as their grantee under the family settlement, all the

lands in question which were originally owned by Stephen Jumel, and to apply all the other estate, real or personal, which might come to him, towards the satisfaction and discharge of the claims and demands of the said two children against Madame Jumel.

Seventh. The bill further sets forth that the said claimant, nevertheless, insists that, by virtue of the strict technical rules of the common law, the technical legal estate in all the lands conveyed to Werckmeister as aforesaid descended to him as heir at law; and that, even though the complainants were the equitable and beneficial owners thereof, he is entitled to prosecute his actions of ejectment for the recovery of the same; and also insists that, however perfect the claims and demands of the two children of Mrs. Chase may be, they are enforceable only through the remedial action of a court of equity; and notwithstanding their sufficiency and effect to absorb all the estate, right, title and interest which he might claim as such heir at law, they must submit to the expense, labor and embarrassment necessarily attendant upon the trials of repeated issues at law, and other litigation, as to the fact of said pretended heirship.

Eighth. The bill further alleges that the claimant, by way of consideration for a release of his pretended title, has received the sum of twenty-five hundred dollars from a purchaser of land of which Madame Jumel died seised, and which had been conveyed to the purchaser by the complainant, Nelson Chase, and claims that the complainants are entitled to recover from him that sum, in part satisfaction of the claims and demands aforesaid against the estate of Madame Jumel.

Lastly.—The relief demanded is the establishment of the trusts declared by the deed of appointment; the ascertainment of the claims and demands which accrued to the complainants, Eliza and William; that the tortious conveyances by Madame Jumel be declared void, and that the claimant, Bowen, be enjoined from the further prosecution of his pretended claim, and that he be decreed to pay the twenty-five hundred dollars received by him as above mentioned, &c., &c.

The cause was tried upon evidence taken at the hearing. It can scarcely be said that there was any controversy as to *mere* matters of fact. The defendant called no witness to dispute any of the evidence given by the complainants. His counsel was of the opinion that it was important for him to produce, as at the trial at law, such evidence as he had tending, as he claimed, to show that the defendant was the son of Madame Jumel. But the answer was made that the bill itself proceeded upon the view that that disputed claim was of no substantial importance. He still thought it important to show (probably to counteract an unfavorable estimate of the claim very likely to be formed from a perusal of the bill and answer) that there was *some serious evidence* tending to show that the pretensions of the claimant were well founded. To satisfy his anxiety upon this point, the complainants' counsel offered broadly to admit, that at the trial at law a witness for the claimant, one Daniel Hull, gave evidence amounting virtually and in substance to the conclusion, that he, the said witness, was present at the birth of said George W. Bowen, and that said Bowen was born of Madame Jumel. This admission was taken (Record, p. 212). Such testimony by a living witness as to the birth of a man then 78 years of age may excite a smile. But the defendant's counsel, not wholly satisfied with this admission, gave in evidence the whole bill

of exceptions on the trial at law. This bill sets forth the actual testimony of the witness Daniel Hull, and it will be found to fall far short of the above admission of the complainants' counsel. (See Record on Writ of Error p. 128.)

Further references to the testimony need not here be made. They may best be made hereafter in immediate connection with any disputed matters of fact.

PROOFS OF THE PLAINTIFFS' TITLE.

First Head.—The title of Stephen Jumel to all the property mentioned in the bill as having been acquired by him, appears by certain deeds. These same deeds were given in evidence by the defendant upon the trial of his action at law for the same purpose, namely, to prove this title of Stephen Jumel. (Record in equity suit, p. 193). (Record on Writ of Error, pp.18, 43, 53, 60, 61.) On the trial of the present suit they were put in evidence by reading from the bill of exceptions.

It is entirely unnecessary to consider these deeds, inasmuch as the parties agree by their pleadings that on June 2d, 1815, Stephen Jumel "was possessed and seised in fee simple absolute" of *all* these lands.

Bill, pp. 3 to 5.
Answer, pp. 32, 33.

Second Head.—The whole of these lands were, subsequently to that date (June 2d, 1815), granted and conveyed directly, or through inter mediate conveyances, to Mrs. Nelson Chase, by her maiden name of Mary Jumel Bownes, in fee simple.

1. The *homestead lot*, called No. 8 on Loss' map, consisting of about 36 acres, being the piece *fourthly* described in the bill. (Record, p. 4.)

(*a.*) Deed dated June 3, 1815, conveys this lot to Benjamin Desobry in trust for Stephen Jumel for life; then in trust for his wife, Eliza B. Jumel, for life; and, as to the remainder, to Stephen Jumel himself in fee.
Record, p. 59.

(*b.*) Deed dated Jan. 13, 1825, by Stephen Jumel, his wife, Eliza B., and Benjamin Desobry, the trustee named in the preceding deed. This *revokes* the preceding deed, and conveys the same lot to John R. Skiddy and Eloy Berger, in trust to sell on direction of Eliza B. Jumel, and hold the proceeds to her separate use.
Record, p. 62.

(*c.*) Deed dated January 1, 1828, by John R. Skiddy and Eloy Berger, the trustees in the preceding deed to Mary Jumel Bownes. It conveys, pursuant to a direction from Madame Jumel, for the expressed consideration of $10,000, the same homestead lot to Mary Jumel Bownes in fee simple.
Record, p. 65.

(2.) The two pieces of property on the corner of Broadway and Liberty street, *firstly* and *secondly* described in the bill. (Record, p. 3.)

(*a.*) Deed dated Jan. 18, 1826, from Stephen Jumel and Eliza B., his wife, to Robert Jenkins Macy. It conveys both these pieces to Robert Jenkins Macy in trust for Madame Jumel *during her life.*
Record, p. 70.

(*b.*) Deed *quadrupartite* dated November 24, 1827, between Robert Jenkins Macy, the trustee in the last preceding deed of the first part, Stephen Jumel, acting by Eliza B. Jumel as his attorney, of the second part, Eliza B. Jumel herself of the third part, and Mary Jumel Bownes of the fourth part. This deed conveys for the consideration of $10,000 and $20,000, ($30,000), both said pieces of property to Mary Jumel Bownes in fee simple.

3. The property (Record, p. 4) known as No. 5 on Loss' map, being the property on the west side of Kings Bridge Road, and *fifthly* described in the bill, (Record, p. 4), and the ninety-four acres on the east side of Kings Bridge Road lying north of the homestead and separated from it by the narrow strip designated on Loss' map as Wear's property, being the part *thirdly* described in the bill.

(*a.*) Deed dated July 30, 1827, by Stephen Jumel (acting by his attorney, Madame Jumel) to Mary Jumel Bownes. This deed conveys the lot on the west side of Kings Bridge Road (No. 5 in Loss' map) to Mary Jumel Bownes in fee simple. This is the property afterwards conveyed to Kingsland.

Record, p. 94.

(*b.*) Deed dated July 30, 1827, by Stephen Jumel (acting by Madame Jumel, as his attorney) to Mary Jumel Bownes. This deed for the consideration of $6,000 conveys lot No. 6 on Loss' map, containing about 29 acres, and being part of the 94 acres above mentioned.

Record, p. 93.

4. The deeds above mentioned do not, nor does any deed actually exhibited at the trial, show any conveyance from Stephen Jumel of the residue of the ninety-four acre lot. Neither is there in evidence any conveyance by Mary Jumel Bownes of such residue. But there is ample and sufficient evidence in the case, that such residue was in like manner conveyed from Stephen Jumel to Mary Jumel Bownes, and was disposed of by the latter in the same way as she disposed of the other property so conveyed to her, and was, at the death of Madame Jumel, in the same condition as to title with the rest of the property, except as to the pieces conveyed to Kingsland and Martin. Any further observations that may fitly be made concerning this incidental point will appear hereafter.

That such residue, as well as all the other property above mentioned was, in point of fact, conveyed from Stephen Jumel to Mary Jumel Bownes, was alleged in the bill, and is admitted by the answer.

Record, pp. 5, 33.

Third Head.—Mary Jumel Bownes, subsequently to the conveyances to her above mentioned, appears to have conveyed to Michael Werckmeister by the following deeds, all the property described in the above mentioned conveyances to her. Her said conveyances to Werckmeister were upon certain trusts in the conveyances expressed. These trusts are precisely the same in all the deeds. They are, shortly speaking,

1st. To collect and receive the rents and profits, and apply the same to the use of Madame Jumel during her life, or, at her election, to permit her to occupy and possess the premises and receive the rents and profits to her separate use.

2d. To sell and convey or lease the premises to such person or persons as she, said Madame Jumel, may designate and appoint, and in case of an absolute sale, to pay the purchase money to her, or invest it as she may direct.

3d. Upon the decease of Madame Jumel, to convey and assure the premises or such parts as may not have previously been conveyed, to the heirs of Madame Jumel in fee simple, and to pay over to such heirs any balance in the hands of the trustee of rents and profits, or purchase money of property sold.

(*a.*) Deed dated Dec. 11th, 1827, from Mary Jumel Bownes to Michael Werckmeister. This deed conveys upon the trusts above mentioned, the two pieces of property on the corner of Broadway and Liberty Street, the lot No. 5 on Loss' map, subsequently conveyed to Kingsland, and lot No. 6 on Loss' map, containing the 29 acres above mentioned.

Record, pp. 4, 56.

(*b.*) Deed dated May 13th, 1828, from Mary Jumel Bownes to Michael Werckmeister. It conveys upon the same trusts the homestead, being lot No. 8 on Loss' map, and the premises *fourthly* described in the bill.

Record, pp. 4, 67.

Fourth Head.—Madame Jumel, subsequently to all the preceding conveyances, executed Nov. 21, 1828, her deed of appointment securing the remainder in fee to Mary Jumel Bownes, unless she, Madame Jumel, should devise it to some on else.

This instrument contains a full description of all the property, which, by the preceding conveyances, appears to have been conveyed from Stephen Jumel to Mary Jumel Bownes, and by her to Michael Werckmeister.

Record, p. 95.

Fifth Head.—Fraudulent conveyances; After the making of the above deed of appointment securing the remainder to Mary Jumel Bownes, and her heirs, Madame Jumel, combining with the trustee, Werckmeister, caused to be conveyed the whole of the ninety-four acre lot to Alexander Hamilton, being the property *thirdly* described in the bill, (Record, p. 4), and comprising the nine lots numbered *six*, *seven*, *nine*, *ten*, *eleven*, *twelve*, *thirteen*, *fourteen and fifteen*, on Loss' Map, all which property a few months afterwards Hamilton re-conveyed to Werckmeister, upon the same trusts as those on which he previously held it.

She also, in 1842, combining in the same manner with Werckmeister, the trustee, caused to be conveyed to one Francis Phillippon, who *eo instanti* reconveyed to her, the same ninety-four acre lot, the lot on the west side of Kings Bridge Road *fifthly* described in the bill, and numbered *five* on Loss' Map, and also the property on the corner of Broadway and Liberty street. At a later period she herself conveyed to A. C. Kingsland, the lot on the west side of Kings Bridge Road (No. 5 on Loss' Map), and to Isaac P. Martin a part (about three acres) of the homestead.

(*a*). Deed dated Jan. 10, 1834, between Michael Werckmeister, of the first part, Madame Jumel, by her then name of Eliza B. Burr, of the second part. This deed re-

cites that Mary Jumel Bownes had by certain deeds previously conveyed certain premises of which the ninety-four acre lot was a part, to Michael Werckmeister, upon the trusts aforesaid, among which was a trust to convey to such person as the party of the second part might appoint, that she had bargained and sold the said ninety-four acre lot to Hamilton, and appoints and directs that Werckmeister convey the same to Hamilton.

Record, p. 84.

(*b*). Deed dated Jan. 10, 1834, between Madame Jumel, by her then name of Eliza B. Burr, of the first part, Michael Werckmeister, of the second part, and Alexander Hamilton, of the third part. This deed for the expressed consideration of $15,000 conveys to Hamilton the ninety-four acre lot.

Record, p. 88.

(*c*). Deed dated October 21, 1834, from Alexander Hamilton, and wife, to Michael Werckmeister. Reconveys, for the same consideration the same premises to Werckmeister, to hold upon the same trusts as he before held them.

(*d*). Deed dated August 20, 1842, between Madame Jumel of the first part, Michael Werckmeister of the second part, and Francis Phillippon of the third part. This deed recites that Mary Jumel Bownes had theretofore conveyed to Michael Werckmeister, upon the trusts above mentioned, omits all reference to any former appointment by Madame Jumel, further recites that she has agreed to convey to

Phillippon, for $100,000, and appoints and directs a conveyance to him of the whole ninety-four acre lot, the property on the corner of Broadway and Liberty Street, and the property on the west side of Kings Bridge road, and Werckmeister conveys accordingly.

Record, p. 77.

(*e*) Deed dated same day as above, August 20, 1842, from Phillippon to Madame Jumel, conveys the same premises as last above described, for the same consideration of $100,000, to Madame Jumel.

(*f*). Deed dated April 15, 1850, from Eliza B. Jumel to Ambrose C. Kingsland, conveys the lot on the west side of Kings Bridge road, numbered 5 on Loss' map.

(*g*). Deed dated March 1, 1853, from Eliza B. Jumel to Isaac P. Martin, conveys a small piece of the homestead (about three acres).

Record, p. 147.

Sixth Head.—In the line of conveyances from Stephen Jumel to and including the appointments by Madame Jumel of Nov. 21, 1828, which is the ultimate settlement, that part of the *ninety-four acre* lot, outside of the twenty-nine acre parcel numbered *six* on Loss' map, is nowhere mentioned or referred to. This circumstance does not embarrass the plaintiffs' case.

1. The defendant's counsel suggested on the argument in the court below that the title to that part of the 94 acre lot never passed out of Stephen Jumel and was in his heirs or in the State. If such were the case it matters nothing to the defendant; the question would be immaterial and need not be noticed; but,

2. The defendant's own claim for the recovery of these lands rests upon the assumption that, like the rest of the property, it was originally conveyed *from* Stephen Jumel to Mary Jumel Bowne, and by her to Werckmeister. The bill, after alleging Stephen Jumel's title to the whole property, further alleges "that, by divers conveyances made "and executed subsequently to the said sec- "ond day of June, in the year one thousand "eight hundred and fifteen, and before the "eleventh day of December, in the year one "thousand eight hundred and twenty-seven, "the lands and premises, with their respect- "ive appurtenances, first, secondly, *thirdly*, "and fifthly, above described, were in due "form of law granted and conveyed from the "said Stephen Jumel, and vested in the said "Mary Jumel Chase, by her then name of "Mary Jumel Bowne, in fee simple" (Record, p. 7); and, also, "that all parts of the "lands *thirdly* above described" (this is the 94 acre lot) "were, at or before the making of "said deed of appointment, in due form of "law settled legally or beneficially to the "benefit of said Mary Jumel Chase and her "heirs in fee, substantially in like manner as "in said deed of appointment expressed" (Record, p. 7.)

The answer to this is: "This defendant "further answering, admits and says that the "said Stephen Jumel, on and subsequent to "the second day of June, in the year one "thousand eight hundred and fifteen, was "possessed of and seised in fee simple absol- "ute of the lands and real estate, first, "secondly, *thirdly*, fourthly, fifthly and "sixthly, described in said bill, and of every "part thereof; and that on or about the "eleventh day of December, in the year one

"thousand eight hundred and twenty-seven, "he, the said Stephen Jumel, by his attorney, "Eliza B. Jumel, in due form of law, duly "granted and conveyed the same, together "with lot number six in said bill designated, to "one Mary Jumel Bowne in fee simple; and "that afterwards, and on or about the last "named day, she, the said Mary Jumel "Bowne, did, in due form of law, convey the "same to said Michael Werckmeister, in said "bill also named, by a certain deed good and "sufficient in the law, and for the sole use "and benefit of Eliza B. Jumel and her "heirs." (Record, p. 33.)

The only difference of view between the bill and the answer upon this point is as to the nature of the conveyance *from* Mary Jumel Bowne, the answer claiming that it was designed to convey, and did convey, a legal *fee simple*, whereas the bill sets forth the trusts in that conveyance contained.

3. The presumption is that the instruments applicable to this part of the *ninety-four acre* lot have been lost "by time or accident." By the testimony of Nelson Chase and C. F. Hinrichs it is shown that they had been sought for and could not be found.

Record, pp. 209, 212.

4. By the uncontradicted testimony of the witness, John G. Caryl, it was proved that Stephen Jumel, after the execution by Madame Jumel of the power of appointment, and while he, Stephen Jumel, was in the occupation of the premises, stated that his title to the whole property had been conveyed away from him and settled in favor of Mary after his wife's and his death. The competency of such testimony is well settled, and it fully

establishes Mary Jumel Bownes' title to this part of the premises.

1 Phillips on Evidence, 4th Am. Ed., by Edwards, 314, n. 104.
Thomas *v.* Wheeler, 47 Missouri, 363.
Queen *v.* Birmingham, 1 Best & Smith, 763, 770.
Bristol *v.* Dunn, 12 Wend., 143.
Gibney *v.* Marchay, 34 N. Y., 303.

5. If confirmation were needed, it might be supplied in abundance.

(*a.*) The parties always enjoyed this part of the property in connection with the rest as an appendage for woodland, &c.

Record, pp. 207, 208.

(*b.*) Nobody ever pretended that the title to it was in a different condition from the title to the rest.

(*c.*) Madam Jumel and Werckmeister, in their deed to Hamilton, and again in their deed to Phillippon, recited that it was in the same condition. These recitals are to the effect, that the title to the *whole* ninety-four acres was in the same condition. As to twenty-nine acres, part of the ninety-four, there is a conveyance to Mary Jumel Bownes in fee, another conveyance by her to Werckmeister, upon trust for such persons as Madame Jumel should appoint, and an appointment by Madame Jumel in favor of Mary Jumel Bownes and her heirs.

Record, pp. 77, 84, 88.

POINTS.

First Point.—The plaintiffs, Eliza J. Pery, and William Inglis Chase, were absolutely entitled,

as the heirs of Mrs. Nelson Chase, upon the death of Madame Jumel, to all the property derived from Stephen Jumel, except the lots fifthly and sixthly described in the bill, which were improperly sold by Madame Jumel to Kingsland and Martin, *bona fide* purchasers.

I. The title of Madame Jumel appears by the conveyances in trust to Michael Werckmeister, dated Dec. 11th, 1827, and May 13th, 1828. The trusts in both deeds are in the same words, and are as follows:

"In trust, nevertheless, for the uses "and purposes hereinafter mentioned, ex- "pressed and declared, that is to say: In "trust that the said party of the second "part and his heirs, collect and receive the "rents, issues and profits of the said above "described and hereby conveyed premises, "and every part and parcel thereof, and pay "over the same unto Eliza Brown Jumel "(the wife of Stephen Jumel, late of the "City of New York, now of Paris in France) "or, at her election, permit and suffer her, "the said Eliza Brown Jumel, to use, occu- "py and possess the said premises, and to "have, take, collect, receive and enjoy the "rents and profits thereof to and for her "own separate use and benefit, and to and "for such other uses and purposes as the "said Eliza Brown Jumel shall please and "think fit at her own free will and pleas- "ure, and not subject to the control or in- "terference of her present or any future "husband, and the receipt and receipts of "her, the said Eliza Brown Jumel, shall at "all times be good and sufficient discharges "for such payments, and for such rents and "profits to him, the said party of the sec- "ond part, his heirs, executors and admin-

" istrators, and to the person and persons
" who are, or shall be liable to pay the same.
" *And upon this further trust*, that the said
" party of the second part, or his heirs,
" lease, demise, let, convey, assure and dis-
" pose of all and singular the said above
" described premises, with their and every
" of their appurtenances to such person or
" persons, for such term or terms, on such
" rent or rents, for such price or prices,
" at such time or times, to such uses, in-
" tents or purposes, and in such manner
" and form as she, the said Eliza Brown
" Jumel, notwithstanding her present or
" any future coverture, as if she were a *feme*
" *sole*, shall, by any instrument in writing
" executed in the presence of any two cred-
" ible witnesses, order, direct, limit or ap-
" point, and in case of an absolute sale of
" said premises, or of any part thereof, to
" pay over the purchase money to the said
" Eliza Brown Jumel, or invest the same as
" she shall order and direct, *and upon this*
" *further trust* upon the decease of the said
" Eliza Brown Jumel to convey the said
" above described premises, or such parts
" thereof as shall not have been pre-
" viously conveyed by the said party of
" the second part, or his heirs, and with
" respect to which no direction or appoint-
" ment shall be made by the said Eliza
" Brown Jumel in her life time, to the heirs
" of the said Eliza Brown Jumel in fee sim-
" ple, and pay over to the heirs of the said
" Eliza such moneys as shall remain in the
" hands or under the control of the said party
" of the second part, or his heirs, arising from
" collections of the rents and profits, or the
" proceeds of the sales of the said above
" described premises, or any part thereof,

" provided, however, that the said party of
" the second part, and his heirs shall be at
" liberty at all times to deduct and retain
" all reasonable and necessary costs, char-
" ges and expenses attending the execution
" of the trusts hereby reposed.

Record, p. 58.

II. By the above trust it clearly appears that the estate or interest of Madame Jumel was not *legal*, but equitable only.

Harton *v.* Harton, 7 Term Rep., 653, 654.
Doe *v.* Barthrop, 5 Taunt., 382.
Lancaster *v.* Dolan, (per Gibson, *C. J.*,) 1 Rawle, 247.
Cornish on Uses, p. 59, § 4.

III. As such equitable owner, Madame Jumel exercised her power of disposition in the only appropriate manner by her deed of appointment, dated Nov. 21, 1828. This instrument, after referring to the power, proceeds: "Now, I, the said Eliza Brown
" Jumel, do hereby order, direct, limit and
" appoint, that immediately after my de-
" mise the said Michael Werckmeister, or
" his heirs, convey all and singular the said
" above described premises to such person
" or persons, and to such uses and purposes
" as I, the said Eliza Brown Jumel, shall,
" by my last will and testament, under my
" hand and executed in the presence of two
" or more witnesses, designate and appoint,
" and for want thereof then that he convey
" the same to my husband, Stephen Jumel,
" in case he be living, for and during his
" natural life, subject to an annuity to be
" charged thereon during his said natural
" life, of six hundred dollars, payable to Mary
" Jumel Bownes; and after the death of my
" said husband, or in case he shall not sur-

" vive me, then immediately after my own " death, to her, the said Mary Jumel " Bownes, and her heirs in fee."

Record, p. 98.

1. Certain suggestions made in the Court below against the appointment, 1st, that it is not a deed *inter partes;* and, 2d, that it is without consideration, are of no weight.

(*a.*) The well known skill of the draftsman (Chancellor Kent) might suffice to convince one that the appointment was sufficient. In fact, it exhibits a perfect accordance with the most approved precedents. But it is familiar law that an appointment under a power may be altogether informal. (Sugden on Powers, 8th Eng. Ed., pp. 200, *et seq.*)

. The Statute of Frauds did, indeed, require that it should be "in writing." (1 Revised Laws of New York of 1813, p. 79, § 12.) No *law* requires anything more. (Gibbons *v.* Moulton, Finch, 346.)

Common law rules do indeed command that "the circumstances required [by the power itself] to attend the execution of the power" shall be observed. This requisite has been complied with. Nothing more was exacted than that any appointment made should be "by an instrument in writing executed in the presence of two credible witnesses." Not even the solemnity of a seal was prescribed. The instrument *is* in writing, and it *has* two witnesses.

Cruise's Digest, Vol. IV ; pp. 188, 189.

(*b.*) A valuable consideration was not necessary to the appointment; and if, on any

of those technical principles, which are quite inapplicable to *such* instruments, a consideration had been needful, it is to be found in the deeds to Werckmeister. The trust deeds containing the power and the appointment are regarded as *one*, the appointment merely identifying or pointing out the beneficial taker under the trust deeds.

Sugden on Powers, 8th Ed., p. 467. §§ 32, 34.
Sugden on Vendors, 14th Ed., p. 602, § 11.
Doe *v.* Whitehead, 2 Burrow, 704.
Hurd *v.* Fletcher, Douglas, 45.

(*c*). The appointment in favor of Mary Jumel Bownes was not a mere executory agreement on the part of the appointor to do some act *in futuro*. It was a complete and consummated declaration of trust, neither requiring nor admitting any further action by the appointor to complete it, to perfect it, or to give it efficacy. It created, *eo instanti*, the relation of trustee and *cestui que trust* between Werckmeister, in whom the legal estate was vested, and Mary Jumel Bownes, in whose favor the trust was declared. In such case *no consideration is needed*. This distinction is fully recognized in many authorities and has often been acted upon.

Stapleton *v.* Stapleton, 14 Simons, 197.
Collinson *v.* Patrick, 2 Keen, 131 to 135, and see notes to Am. Ed.
Wheatley *v.* Purrs, 1 Keen, 558, and notes to Am. Ed.
McFadden *v.* Jenkins, 1 Phillips, 157, and notes to Am. Ed.
Pulvertoft *v.* Pulvertoft, 18 Vesey, 99.

IV. This appointment was *irrevocable*, Madame Jumel not having reserved in it any power

to revoke it. By necessary consequence, as she died intestate, the plaintiffs, Eliza J. Pery and William Inglis Chase, as heirs of Mrs. Nelson Chase, deceased, formerly Mary Jumel Bownes, were entitled in fee simple immediately upon Madame Jumel's death.

Cruise's Digest, Vol. IV ; 138, Sec. 23.
Hatcher *v.* Curtis. 2 Freeman, 61.
Sugden on Powers, 8th Ed., p. 369, § 17 ; p. 387, § 53 ; p. 458, § 3.
Villers *v.* Beaumont, 1 Vern, 100.
Bill *v.* Curston, 2 Mylne & Keen, 503.
Worrall *v.* Jacob, 3 Merivale, 256, 270 (cited in 1 Peters, 16).
Toker *v.* Toker, 3 De Gex, Jones & S., 487, 490, 491.
Sudgen on Powers, 8th Eng. Ed., 200, 203.

1. Indeed, the correct expression is that the power, once executed, became, *ipso facto, extinguished.* Had a power of revocation been reserved in it, it would have been a *new* power.

Cruise's Digest, Vol. IV ; 233, *et seq.*

2. It was a substitute for the act of adoption well known in the law of many nations, ancient and modern, but not recognized in our law.

See the Law's Resolutions of Woman's Rights, London, A. D. 1632; p. 60.
Wharton's Law Lexicon, Article "Adoption."
Bouvier's Law Dictionary " "
Lieber's Enc., Am., vol. 1, p. 62.
Ripley & Dana's New Am. Enc., vol. 1, 133.
Colquhoun's Summary of Laws, Sec. 683 to 708.

3. The object and intent of this family settlement would have failed had there been

reserved to Madame Jumel a power of revocation. The power to make a will was advisable.

Chancellor Kent in Van Alst *v.* Hunter.
5 John, Ch. 160.

V. The appointment is that the property, after the death of Madame Jumel, should Mr. Jumel not survive her, be *conveyed* to Mary Jumel Bowne and her heirs. Under such a limitation it is plain that the heirs would not take as *purchasers*, but by *inheritance* from their mother; and, placing himself upon this just construction, the appellant's counsel in the court below suggested that, as Mary Jumel Bownes died before the time appointed for the conveyance, such conveyance could never be made, and, consequently, that the device of the conveyancer who drew the appointment falls to the ground.

This suggestion might serve to detain for a while the attention of the novice. The well instructed lawyer will at once dismiss it as of no weight, and founded upon a misapprehension of fundamental principles.

1. It is familiar doctrine that in the creation, classification and transmission or devolution of interests in real property, there is a substantial analogy between legal and equitable estates. This is well explained and illustrated in Mr. Jickling's learned and elegant work.

2. Uses before the statute of 27 Henry VIII, c. 10, and trusts since that enactment, were and are cognizable in equity only; but, in dealing with these interests, equity adopts and follows, not indeed the technicalities, but the substantial rules of the common law.

(*a.*) The same language in substance, which, operating upon the legal title creates an estate at law, when operating upon the equitable interest, creates a like equitable estate. Equitable interests may be classified in like manner as legal estates, as in fee, or in tail, in possession, remainder or reversion—as held in severalty, joint tenancy or in common—as vested or contingent. They are descendible to the heir, devisable by will, and alienable by deed, or by fine and recovery.

4 Kent. Com. 293, 303, 304.
Sanders on Uses, vol. 1, pp. 62, *et seq*, 280 *et seq.*
Lewin on Trusts, chap. viii.

3. There is a distinction in equitable estates between those in which the limitations are *complete* and *final*, and those in which minutes, or instructions merely, are given, looking to a more precise and definite settlement thereafter. These different classes of trusts are sometimes described, though not very appropriately, as trusts *executed* and trusts *executory*. In respect to this distinction, the trust in favor of Mary Jumel Bownes and her heirs is a trust *executed*. The limitation is *perfectly declared*.

Lewin on Trusts, pp. 88, 89.

4. But all equitable interests are essentially distinguishable from legal estates as being *executory*, that is, requiring some further act to give the beneficiary a perfect title, whilst, on the contrary, legal estates vest absolutely, and are *executed* in the beneficiary by the original creative act.

Lewin on Trusts, *ubi supra.*

5. It is a fundamental principle, entirely decisive of the point under consideration, that, in the construction of a perfectly declared equitable interest, its *executory* character is to be left wholly out of view, and the limitation construed precisely the same as if it were a limitation of a legal estate. A court of equity, therefore, in enforcing the trust in question, would order Werckmeister, the trustee, or his heirs, to convey, not to Mary Jumel Bownes, indeed, as that is impossible, but to her heirs, or their grantees, or, as she had a vested, alienable interest, to her devisees, or grantees by act *inter vivos*, if any such there had been. A selection of authorities fully establishing this proposition is contained in Appendix B.

(*a.*) Equity, indeed, not only compels that to be done which has been agreed, or directed to be done, but, guided by one of its principal maxims, *treats it as already done*. There are many illustrations of the operation of this rule. Money covenanted or devised to be laid out in land is treated in equity as land; and *e converso* land covenanted or devised to be sold is treated as money. The circumstance that the appointment in favor of Mary Jumel Bownes and her heirs is made by *a direction to trustees to convey*, simply converts what would otherwise be a *legal* into an *equitable* estate; and in the words of Lord Mansfield "the *forum*, where it is adjudged, is the only difference between trusts and legal estates." To hold otherwise would be to introduce utter confusion into the law of property.

Ld. Mansfield in Burgess *v.* Wheat, 1 W. Black. 190.

1 Story's Eq. Jur. § 64 g.

Craig *v.* Leslie, 3 Wheaton; 563. 577.

(*b.*) On any other view, the disposition of the property in question so elaborately determined upon by the trust deed to Werckmeister and the appointment thereunder were dependent for their effect upon the question, wholly unimportant in the view of those by whom the disposition was made, whether Mary Jumel Bownes survived Madame Jumel. In the one case, her children were to be provided for; in the other, left without provision. Nay, more, the object and purpose of the settlement might have been defeated even in the case of the survival of Mary by a wrongful refusal of the trustee to execute a deed to her before her death.

6. The conclusion from the foregoing is that, upon the execution of the power of appointment by the instrument of Nov. 21st, 1828, an equitable remainder in fee became vested in Mary Jumel Bownes. Such estate, precisely like a legal vested remainder, was alienable and descendible, and, upon the death of the latter, passed to her children, the plaintiffs Eliza and William, who became entitled to the enjoyment of the estate upon the death of Madame Jumel. Their title was, by the family settlement executed by them in July, 1865, vested in the plaintiff, Nelson Chase, for the purposes therein expressed.

VI. The conveyances to Hamilton and Phillippon were in violation of the trusts under the conveyances to Werckmeister and the deed of appointment; and, in the view of equity, wholly inoperative upon the rights of Mrs. Nelson Chase and her children. If any useful purpose required it, they would be

declared void, and any wrongful legal title thereby gained, be directed to be reconveyed to the beneficial owners.

1. In the first instance, *i. e.*, the conveyance to Hamilton, the property was reconveyed to Werckmeister, the trustee, to hold on the same trusts as before. This completely reinstates the trusts.

Record, p. 91.

2. In the second, *i. e.*, the conveyance to Phillippon, the fraud of *all* parties is palpable.

(*a.*) Phillippon had at least constructive notice, the appointment being recorded.

1 R. L. of N. Y. (1813), 370, secs. 4 and 5.

(*b.*) Phillippon paid no consideration. The conveyance to him, and the conveyance by him *eo instanti* to Madame Jumel constitutes but one transaction, tantamount to one conveyance from Werckmeister to Madame Jumel. "*Res ipsa loquitur.*" In a court of equity the transaction will be viewed in precisely the same manner as if the conveyance were direct from Werckmeister to Madam Jumel. Such a conveyance was absolutely void by the statute law then and still in force.

1 R. S. of 1830, p. 730, §§ 64, 65.
Holt *v.* Rogers, 8 Peters, 420, 432.
Meriden Brittania Co. *v.* Zingsen, 48 N. Y., 247, 251.
Testimony of Hinrichs, Record pp. 107, 108.

(*c.*) If it were possible to treat Phillippon as a *bona fide* purchaser for value, it would not help the case. It is true that the

general doctrine is that a *bona fide* purchaser, without notice, may convey a good title to a purchaser with notice. Otherwise, he might be deprived of a market for his title, and the protection which the law extends to him made nugatory. But to this rule there is one certain exception. A party or privy to the original fraud, by which the true title was divested, cannot become a purchaser and take a good title.

Church *v.* Ruland, 64 Penn., 432, 444.

VII. The title or estate thus settled upon Mrs. Nelson Chase, and her heirs, was *equitable* only. It was sufficient to defend a possession against any one, except the holder of the *legal* estate. He, however, could oust, in a court of common law, even the beneficial owners.

1. By the law, as it existed in New York, prior to the Revised Statutes of 1830, the estate, until the actual execution of a conveyance to Mary Jumel Bownes, or her heirs, was equitable only.

Stanley *v.* Stanley, 16 Vesey, 490, 507.
Phipps *v.* Ackers, 9 Cl. & Fin., 583, 594.
Riley *v.* Garnet, 3 De Gex. & Smales, 629.

2. The holder of the *legal* title might oust the beneficial owner by an action at law, though no one else could.

Wood *v.* Mather, 38 Barb., 474, 481.

3. The Revised Statutes of 1830 did not change the rule in this respect. They did not

convert the equitable interest into a legal estate.

R. S. of New York, Part II., Chap. I., Title 2, Article Second, §§ 48, 49, Title 5, § 11, (Vol. 1, First Ed., pp. 727, 750.)
Pitcher *v.* Carter, 4 Sand., Ch. 2, 16.
Wood *v.* Mather, *ubi supra.*
S. C. *sub. nom.* Anderson *v.* Mather, 44, N. Y., 249, 258.

4. The merely technical legal title of Werckmeister, to convey to Mary Jumel Bownes, or her heirs, passed by Werckmeister's deed to Phillippon, and by Phillippon's deed to Madame Jumel, and at her death descended to her heirs. In every devolution of it, the trust to convey remained attached to it. On each alienation of the *legal* estate, the use was annexed by "a privity in the alienee."

Cornish on Uses, p. 17, notes d. to g.
Cruise's Digest, Vol. I, pp. 338, 339.

VIII. It follows that, in order to protect and quiet the heirs of Mary Jumel Bownes, and their assigns, in their beneficial ownership or equitable right of enjoyment of these lands, they may need either a conveyance from the heirs of Madame Jumel, or an injunction restraining those heirs from suing at law on their legal title. As the defendant was a pretender to that character, the plaintiffs elected to pray for a perpetual injunction against him, instead of a conveyance from him.

Second Point.—As well under the head of jurisdiction last above referred to, as for the pur-

pose of procuring a definite adjudication that the conveyances to Hamilton and Phillippon were and are in fraud of the trust created by the deed of appointment, and, therefore, void as against the heirs of Mrs. Nelson Chase, deceased, and their assigns, the plaintiffs are entitled to the relief awarded to them by the decree appealed from.

1 U. S. Statutes at Large, p. 82, § 16.
2 Story's Eq. Jur., 901 to 904.
Crews *v.* Burcham, 1 Black., 352.
Crofts *v.* Middleton, 8 De Gex., Macnaghton & Gordon, 192, 208, 210, 220.

Third Point.—Madame Jumel in 1854, besides giving her bond for $1,000 a year, represented to Mrs. Pery and her intended husband and family, that her estate was, in value, $2,000,000, and induced them to intermarry, by a promise to leave at least one-half thereof to the latter, by testament (see Letters, Record, pp. 201 to 203). Her representatives, real and personal, were bound at her death specifically to make good this undertaking. Such performance could only have been made by conveying to Mrs. Pery in 1865, the whole estate left, not only that derived from Stephen Jumel, but all Madame Jumel's subsequent acquisitions. The whole estate derived from Stephen Jumel is here included along with her subsequent acquisitions, because it was all hers, within the meaning of this marriage contract. She had a power of devising which extended to the *whole*. This alone constitutes a perfect claim to the *whole* estate.

De Bret *v.* Thomson, 3 Beavan, 469.
S. C., 12 Cl. & Fin., 45.
Barksworth *v.* Young, 4 Dewey, 1.
Saunders *v.* Creamer, 3 Dr. & Wr., 87.
Ridley *v.* Ridley, 34 L. J. N. S. Ch. 462.
And 34 Beavan, 478.
Patterson *v.* Patterson, 13 John., 380.

1. The whole value of her estate at her death, including that derived from Stephen Jumel, was proved not to amount to so much as $700,000.

Testimony of A. F. Smith, pp. 160 to 162.
" R. C. Combs, p. 185.
" S. R. Childs, pp. 188 to 193.

2. Equity, regarding that as done which ought to be done, will hold Mrs. Pery and her assigns as entitled in equity to the whole estate in like manner as if Madame Jumel had given it to Mrs. Pery by will.

3. It will be remembered that this claim was assigned by the family settlement to the complainant, Nelson Chase

4. This part of the claims of the complainant was not passed upon by the Court below. It was not necessary. The indisputable claims arising out of the tortious sales of trust property exhausted many times the estate proper of Madame Jumel.

Fourth Point.—Irrespective of the obligations growing out of the marriage contract negotiated by Madame Jumel, her estate was liable, at her death, to make good to the plaintiffs, Eliza and William, the spoliation of the trust effected by her conveyances of the parcels described in the bill as *five* and *six*, to Kingsland and Martin. The proper reparation to be enforced was to compel her representatives to convey to the plaintiffs, Eliza and William, or their assigns, the *same* lands, or *other* lands of *equal value*.

I. The value of the lands unlawfully withdrawn from the trust was, at the time of the death of Madame Jumel, not less than $305,000.

1. The lot sold to Kingsland containing 39 acres, according to the testimony of A. F. Smith, was worth $7,000 to $7,500 per acre. As against wrong doers we are entitled to take the larger figure, which makes the whole value upwards of $292,000 (Record, pp. 160, 161). The three acres, part of the homestead, sold to Martin, were worth $4,350 per acre; i. e., the three acres were worth $13,050.

Record, pp. 186, 187.

II. The value of the whole real and personal estate of Madame Jumel at her death was not more than $68,000.

1. The 55 acre lot in Saratoga, $200 per acre,	$11,000
The 25 acre lot in Saratoga, $400 per acre	10,000
The 162 acres, $100 per acre,	16,200
The property on Circular Street,	4,500
Real Estate	$41,700
Personal Estate.	
The amount of the inventory, less $3,000 worthless assets,	$20,124.22
Value of diamonds, not included in inventory	5,500.00
	25,624.22
	41,700.00
Total	$67,324.22

Record, pp. 169, 188 to 193.

III. In estimating the value of the restoration which Madame Jumel's estate should

justly be required to make for this wrongful spoliation of the trust, we have taken only the value of the property sold as it was at Madame Jumel's death, the time when the liability matured. Upon principle and authority, we might go further and take the value of the property at the time of trial.

1. On failure of title, *without fraud*, a vendor of real property is commonly liable only to reimburse the consideration money, with interest. But if there be any fraud, ill faith, or wrong on the part of the vendor, the vendee is entitled to such damages as will give him the benefit of his bargain.

Pumpelly *v.* Phelps, 40 N. Y., 67.

2. It would seem scarcely to admit of question, that a fraudulent or unlawful and tortious making away with another's title to property, should entitle the latter to reimbursement of the utmost value of the property taken down to the day of trial. This has been fully established in relation to the unlawful converson of personal property; and surely, the rule of justice must be the same in the case of real property.

Markham *v.* Jaudon, 41 N. Y.. 245.
Romaine *v.* Van Allen, 26 N. Y., 310,
Blot *v.* Boiceau, 3 Coms., 85.
Scott *v.* Rogers, 31 N. Y., 676.
Owen *v.* Routh, 14 Com. Bench, 340.,

3. The rule sometime applied, of awarding, in the case of the sale by a broker of the stock purchased by him for a customer in speculative transactions, for failure to keep the margin good, damages founded upon the highest value of the stock in the market *at any time* between the sale and the trial, has

been criticised and condemned upon grounds specially relating to such transactions.

Baker *v.* Drake,

4. But the principle upon which all the authorities are agreed is, that in case of fraudulent or wrongful conversions of property the injured party is entitled to *full* reparation. He is to be made *whole.*

Griffin *v.* Culver, 16 N. Y., 489.
Myers *v.* Burns, 35 N. Y., 273.
Starbird *v.* Barrons, 38 N. Y., 238.

5. Such full reparation includes an allowance of interest on the value of the property from the time of Madame Jumel's death. This of itself swells the claim by the additional sum of $106,000 at least, making in all $371,000, which is several times the entire value of the whole Saratoga property together with the personal estate.

IV. The plaintiffs consented to make no other claim against the heirs at law of Madame Jumel than for this specific property and the $2,500 obtained by the defendant from Covert as part of Madame Jumel's estate. They were, therefore, entitled to hold the property, and to a decree for the $2,500, with interest.

See Decree, p. 235.

V. Where trustees of future interests and the life tenant thus collude and destroy or displace the former by a sale to a *bona fide* alienee, they will be decreed to make restitution to the injured parties by causing to be conveyed to them lands of equal value.

Lewin on Trusts, 3d Eng. Ed., 406, notes *d* and *g*, and cases there cited; also p. 763.
Mansell *v.* Mansell, 2 Peere Wms., 681, 678.
Pye *v.* George, Prec. in Chy., 308,
S. C., 1 Peere Wms., 128.
Parkes *v.* White, 11 Vesey, 209, 220, 236.

1. The rule thus adopted by equity to redress such an injury is in accordance with very ancient methods. By the feudal law, if the vassal was evicted of his feud, the lord was bound to give him another feud of *equal value.* The same rule was subsequently applied in the case of alienations with covenants of warranty. The obligation of the covenant descended also upon the heir of the covenantor, and bound him to yield to the covenantee, in case of eviction, lands of *equal value.* This obligation was, indeed, subject to the condition, that the heir had lands by descent. In case, however, he had no lands by descent, he was absolutely barred from claiming the lands himself as heir: for, in that case he would gain lands by descent which he would be forthwith bound to apply to the satisfaction of the warranty.

Bl. Com, Book, 2d, pp. 300 to 303.
See also entry in the Recovery Roll in.
Chitty's Blackstone, vol. 1, p. 532.

VI. The notion that the proper remedy of the heirs of Mrs. Nelson Chase is against the innocent purchasers for value, who have also Madame Jumel's covenant of warranty, will not be entertained.

1. When it is considered that Madame Jumel, at the time she procured these tortious conveyances to be made, had the absolute power to dispose of the property by will, it will be seen that an attempt by Mary Jumel Bowne and her heirs, who are not purchasers for value, to retake the property, would not be favored in equity.

VII. The fact that George W. Bowen's heirship is disputable is a proper and sufficient reason for inducing the Court, instead of ex-

acting a conveyance from him, to satisfy itself by enjoining him from claiming any of Madame Jumel's personal assets, or the Saratoga lands, and compelling him to pay the $2,500 with interest. It will be borne in mind that the claimant, Bowen, has three other actions of ejectment pending, by which he seeks to recover all the other lands, as to which it is sought to enjoin him.

See Stipulation, Record, pp. 230, 231.

1. The $2,500 was obtained by him on the pretence that he was heir at law of Madame Jumel as a consideration for relinquishing his alleged rights in her estate. He cannot in equity hold this money against her creditors.

Record pp. 29. 47.

VIII. No element is wanting to the completeness of the plaintiffs' case for the relief sought by them and granted by the decree, enjoining any pursuit by the claimant Bowen of the personal property or of the Saratoga lands.

1. The evidence establishing the claims of the plaintiffs, Eliza and William, and showing that they exceeded many times the entire value of the personal property and the Saratoga lands was uncontradicted.

2. It was also clearly proved that Madame Jumel left *no other* property or estate, to which resort could be had, to pay these claims.

Record pp. 193, 194.

3. It was also clearly proved that there were no other unpaid debts or obligations of Madame Jumel besides these, and the obligations growing out of the marriage contract on Eliza's marriage.

Record p. 194.

4. It was also clearly proved, indeed admitted, that the claimant Bowen was not a citizen or resident of New York, and had no property in that State, unless his pretensions to heirship were well founded. He was therefore, beyond the jurisdiction, and not accessible by ordinary suit in the State courts, and could only be reached by a bill filed as the present was by way of cross action.

5. The original obligation incurred by Madame Jumel, which would descend upon him if he were her heir, was equitable and susceptible of enforcement in a court of equity by a decree requiring her to restore to the trust, *lands of equal value.*

6. Courts of equity have express jurisdiction to enforce claims against heirs in respect to lands descended to them. By the Revised Statutes of 1830 the remedy was exclusively lodged in courts of equity. By a subsequent statute, the remedy might be pursued either at law or in equity.

R. S., of New York, (First Ed.), Part III. Ch. VIII., Title 3, Article Second, § 42.
Laws of 1837 of New York, Ch. 460, § 73, p. 537.

7. The prevention of circuity of action is a principle upon which courts of law often act. Thus, where one conveys lands with a covenant of warranty, if the grantor's heir should subsequently bring ejectment on any after acquired title against the grantee or his heir, for the same lands, the covenant would be a good plea in bar of the suit. This is on the ground, not that the covenant enlarges the estate, but, because, if the heir should succeed, he would at once gain assets by descent, and would be liable on his *ancestor's* conven-

ant in the value of the lands. So a covenant not to sue, although not operative as a release, may be pleaded in bar of an action, for the reason that the plaintiff, if successful, would be at once liable to the defendant in damages to the *amount* of the recovery. In equity, this principle, designed to prevent fruitless litigation, is extensively acted upon.

Fifth Point.—The intolerable mischief and vexation to the plaintiffs, the courts, and the public, resulting from the idle and necessarily fruitless attempts of the defendant to establish his heirship would of themselves furnish a just ground for the equitable interposition sought by the bill. It is only in a court of equity that the various and complicated relations of the parties to the property in question can be brought into juxtaposition and contraposition so as to afford the means of obviating useless contention upon that wholly unimportant and immaterial issue.

I. The character of the litigation will not escape the attention of the Court.

1. It is the effort of a speculative combination of persons, including the claimant Bowen, in pursuance of a bargain whereby others than himself are to prosecute suits in his name at their risk, and principally at their expense, for a reward to be measured out to them in case of success. When the utter fruitlessness of such a controversy, as already established, is considered, it can hardly be doubted that the animating hope of the parties insisting upon the litigation is to so embarrass the plaintiffs, by making their title unmarketable,

as to force them to a payment of money as the only method of enabling themselves to enjoy their property.

See Bill, pp. 20, 22, 25.
See Answer, pp. 40, 41.
See Testimony of Bowen in Record on Writ of Error, pp. 271 to 275, 276 to 279, 280.

2. The claim which this combination presses upon the attention of the courts is that of a confessed illegitimate, so old that no living witness can be produced to testify to his birth; who, according to his own testimony, never knew and never was told who his mother was until he had arrived at man's estate; who never asserted his alleged relationship to Madame Jumel until long after her death; and who, although he used to see her in public places in Saratoga, and sometimes when having his wife in company with him, never even told his wife, although she well knew his illegitimacy, of this alleged relationship, and who admits that no word ever passed between him and his alleged mother.

The wide avenue thus left open to fraud and perjury is too obvious to escape attention.

3. By his own confession a monstrous series of perjuries had already been perpetrated in his behalf. When these perjuries were exposed, he offered no explanation of his own extraordinary testimony, and can now give no explanation which would satisfy for a moment a reasonable mind.

On the first trial he produced and read the deposition taken on his behalf of one Joseph Perry, who swore that he was born in Providence; was in childhood a playmate of the claimant; that he lived in Providence until his manhood, and had always known him;

that he once saw at the house where Bowen lived, a woman who declared herself Bowen's mother, and heard her making friendly and maternal inquiries as to his welfare, and that he many years afterwards saw the same woman in New York as Madame Jumel, and that she entertained in a friendly manner an application or suggestion made by him that she should aid Bowen in his business.

It was proved by a host of witnesses that the testimony of Perry was a monstrous series of perjuries, and that he was not born and never resided in Providence. Bowen's own counsel, indeed, were obliged to admit that this witness was a perjurer; but Bowen made no attempt to explain his own testimony. His counsel threw out the utterly unsupported assertion of their belief, that this witness had been fraudulently "palmed off" upon them by the defendant in the suit.

See Bill, p. 25.
See Answer, p, 43.

4. It is a controversy of this description which the claimant, Bowen, and those associated with him, have already brought to two trials, each of which occupied a court and jury two months.

5. If this issue be, as we think it clearly appears, wholly destitute of any substantial importance, and the claimant has yet a right to keep it on foot, and to insist upon repeated trials thereof, until the property in controversy is lost in the effort to defend the title against such attacks, occupying the time of courts to the exclusion of the business of all other suitors, the power of a Court of Equity to suppress mischevious and vexatious litiga-

tion, and to protect parties, the courts and the public therefrom, is feeble indeed.

Lastly.—The decree appealed from should be affirmed in all its parts, with costs.

JAMES C. CARTER,
Of Counsel for Appellees.

APPENDIX A.

ABSTRACT OF PLEADINGS.

Bill.	*Answer.*
Alleges the marriage in April 1804, in New York City, of Stephen Jumel, a wealthy French merchant of New York, with a young woman in humble, pecuniary circumstances, of Rhode Island, then named or called Eliza Bowen, and afterwards Eliza B. Jumel, and the living together of this couple until the death of Jumel, intestate, without issue or other heir-at-law then surviving, May 22d, 1832. (Record, p. 2.)	Substantially admitted, except as to the allegations of the intestacy of Stephen Jumel, the humble pecuniary condition of Eliza Bowen, and alleges that her real name was Eliza, or Betsy, Bowen. (Record, p. 31.)
Alleges the survival of Eliza B. Jumel, and her death, as his widow, July 16th, 1865, in the 89th year of her age. (Record, p. 2.)	Admitted, except as to age, which is stated to be 90 or more. (Record, p. 31)
Alleges that Jumel and wife in or about 1805, took into their household, and brought up as their child and as the intended heir of their property, a female child of tender years, afterwards mentioned in the bill as Mary Jumel Chase, and supported and educated her until her marriage, with their approval, Jan. 15th, 1832, to the complainant, Nelson Chase. (Record, p 2.)	Denied. (Record, p. 32.)
Alleges the full continuance of this relationship of adopted child until the death of said Mary, May 5th, 1843. (Record, p. 2.)	Denied. (Record, p. 32.)
Alleges that Mary Jumel Chase left surviving, at her death, two children, the complainants, Eliza Jumel Pery and William Inglis Chase. (Record, p. 2.)	Admitted. (Record, p. 32.)

Bill.	*Answer.*
Alleges that Madame Jumel, in comformity with a promise made by her to the said Mary in the last illness of the latter, assumed the guardianship and custody of Mary's said two children, then of tender years, as her descendants and grandchildren by adoption, and the intended heirs and successors to her estates, and so supported and educated them, the said Eliza, until her marriage, and the said William until he was nineteen years of age. (Record, p. 3.)	Admits that Madame Jume supported, maintained, and in part educated these two children, but denies the residue of the averment. (Record, p. 32.)
Alleges the seisin of Stephen Jumel in fee simple absolute of the following real property: *First.* A lot on the corner of Broadway and Liberty Street, New York City. *Secondly.* Another lot on the same corner. *Thirdly.* A lot of ninety-four acres of rural property in the north part of the same City, consisting of the nine lots numbered on a map made by Charles Loss, Six, Seven, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen and Fifteen. *Fourthly.* Another lot of rural property, containing about thirty-two acres, being the homestead lot, and numbered *Eight* on the Loss map. *Fifthly.* Another lot of rural property, numbered *Five* on the Loss map. (Record, pp. 3 and 4.)	Admitted (Record, p 33.)
Alleges, that Jumel, on and long before June 2d, 1815, had as his homestead a large and elegant mansion, with barn, stables, &c., on the lot *fourthly* above described, being lot No. *eight* on the Loss	Substantially admitted, so far as respects the lifetime of Stephen Jumel; but it is denied that they were *exclusively* so occupied. Alleges that after the death of Stephen Jumel, the lands were in

Bill.	*Answer.*
map, which he occupied as a residence for his family, consisting of himself, wife, and adopted daughter, and that he occupied and enjoyed in connection therewith, as woodland, pasture and meadow, the property *thirdly* above described, that is, lots *six*, *seven*, *nine*, *ten*, *eleven*, *twelve*, *thirteen*, *fourteen* and *fifteen*, on the Loss map. That these lots were wild, uncultivated land, lying together and undivided, nigh unto the homestead, and served to furnish fuel, fencing timber, corn, vegetables, &c., for the family, and were so occupied by Jumel and his family—consisting of himself, wife and adopted daughter, until her marriage, and afterwards of the same persons, together with Nelson Chase, her husband—in his lifetime, and by his widow and her family, after his death. (Record, p. 5.)	the possession of his widow, until her death. (Record, p. 33.)
Alleges, that as usual in such cases, on the part of a widow on the decease of her husband, Madame Jumel, after her husband's death, continued to live with her adopted daughter, and her husband, Nelson Chase, and with their two children when they came into life, and that these five persons constituted the family until the marriage of the complainant Eliza Jumel Pery. (Record, p. 5.)	These allegations not noticed by the answer.
Alleges, that by divers conveyances, made after June 2d, 1815, and before December 11th, 1827, all the lands, *first*, *secondly*, *thirdly* and *fifthly*, above described, being all the property except the homestead lot, were conveyed from Stephen Jumel and vested in the said Mary Jumel Chase, by her then maiden name of Mary	Denied; but at the same time it is alleged, that Stephen Jumel was seised in fee of the *whole property* theretofore described in the bill, and on or about December 11th, 1827, conveyed it to Mary Jumel Bowne, in fee, and that she afterwards conveyed it to Werckmeister, in trust, for the sole use and benefit of Madame Jumel, and

Bill.	*Answer.*
Jumel Bowne, in fee simple, and that on the last mentioned day she conveyed the pieces *first*, *secondly* and *fifthly*, above described, and so much of the lot *fourthly* above described, as consists of lot No. *six* on the Loss map, to one Michael Werckmeister, in *trust*, however: 1st. For the benefit of Madame Jumel during her life. 2d. To convey to such person as Madame Jumel should, by any instrument in writing, executed, &c., &c., designate and appoint. 3d. In default of such appointment, to convey to the heirs of Madame Jumel, in fee. (Record, p. 6.)	with intent to convey an absolute title to the latter, (Record, p. 33.)
Alleges that by divers conveyances, executed subsequently to June 2d, 1815, and before May 13th, 1828, lot No. 8 on the Loss map, being the homestead lot, was conveyed by Stephen Jumel and vested in said Mary Jumel Chase, by her then name of Mary Jumel Bowne, in fee; and that on the day last named she conveyed the same property to the said Werckmeister, upon the same trusts as expressed in her above mentioned deed to Werckmeister of other property. (Record, pp. 6 and 7.)	These allegations covered by the same denial and averment in the answer as above mentioned. (Record, p. 33.)
Alleges an exercise of the power of appointment given to Madame Jumel by each of the two deeds above mentioned to Werckmeister, by the due execution by Madame Jumel of an instrument of appointment, on the 21st of November, 1828, by which she limited and appointed estates in the said property, as follows: 1st. That after the death of her, the said Madame Jumel, Werckmeister, the trustee, should	Admits the execution of an instrument "in some respects similar" to the alleged deed of appointment; but denies that it contained the provisions or had the force and effect attributed to it in the bill, and avers that it became wholly inoperative after the execution of the deeds to and from Francis Phillippon afterwards mentioned. (Record, p. 33.)

Bill.	*Answer*
convey the property to such persons as she should, *by her last will*, designate and appoint. 2d. That in default of such appointment he should convey to Stephen Jumel, should he survive her, for his life, subject to an annuity to Mary Jumel Chase, and after the death of Stephen Jumel, or, should he not survive her, upon her death, to convey to Mary Jumel Chase and her heirs, in fee. (Record, p. 7.)	
Alleges that at or before the execution by Madame Jumel, of the above mentioned deed of appointment of November 21, 1828, all parts of the property, *thirdly*, described in the bill, being lots numbered *six*, *seven*, *nine*, *ten*, *eleven*, *twelve*, *thirteen*, *fourteen* and *fifteen*, were settled legally or beneficially, to the benefit of Mary Jumel Chase and her heirs in like manner, as specified in said deed of appointment, and that Werckmeister died before Madame Jumel without leaving any heir competent to take lands from him. (Record, p. 7.)	Denied, except that it admits that Werckmeister died before Madame Jumel. (Record, p. 33).
Alleges that after the death of Stephen Jumel, Madame Jumel acquired in fee, by grant to her and her heirs, divers pieces of real estate, being two lots on the Seventh avenue in New York and the Saratoga property, and that she died seised thereof. (Record, pp. 7 to 9.)	Admitted. (Record, p. 34.)
Alleges that Madame Jumel, after the execution by her of the deed of appointment of November 21, 1828, and after the death of Mary Jumel Chase, and about April 15, 1850, fraudulently and	Denied. (Record, p. 34.)

Bill.	*Answer*
in violation of the trust to Werckmeister, and of said deed of appointment, but in legal form, caused to be conveyed by certain deeds to one Ambrose Kingsland, in fee, the lands *fifthly* described in the bill, being lot No. 5 on the Loss map, and that Kingsland and his assigns have ever since held the same. (Record, p. 9.)	
Alleges that afterwards, and on March 1, 1853, she, in like manner, fraudulently and in violation of said trust and appointment, caused to be conveyed to one Isaac P. Martin, a part, about three acres, of the homestead property. (Record, p. 9.)	Denied. (Record, p. 34.)
Claims and insists that Madame Jumel, by reason of the said conveyances in fraud of the trust and appointment aforesaid, prevented the complainants from receiving or enjoying, after her death, the property so conveyed, and that Madame Jumel, at her death, and her real and personal representatives, whether executors, administrators, heirs at law, next of kin, devisees or legatees, were bound to make restitution to said complainants either of the same lands or lands of equal value, and that such obligation is in full force and embraced in the conveyance to Nelson Chase, afterwards mentioned. (Record, p. 9.)	Denied. (Record, p. 35.)
Alleges that Madame Jumel negotiated a contract of marriage between the complainant, Eliza Jumel Pery, then Eliza Jumel Chase, and the complainant, Paul R. G. Pery, and represented that her estate amounted to two mil-	Denied. (Record, pp. 35 and 36.)

Bill.

lions of dollars, and, should the marriage take place, she would assure, by her last will, one half her said estate to said Eliza Jumel Chase, and, if she continued to be dutiful and affectionate towards her, Madame Jumel would increase said share.

That the marriage was had and solemnized upon the faith of this representation and contract on the 15th of July, 1854, and that said Eliza Jumel Chase did always continue to be dutiful and affactionate; that the representation by Madame Jumel as to the amount of her property was not true, the same not being worth more than one million of dollars, and that she, said Madame Jumel, did not, by any last will, leave to said Eliza Jumel Chase any property.

That she, Eliza Jumel Chase, is entitled to an enforcement of that contract, by an award to her of the whole estate of Madame Jumel, or, if not to that precise and specific remedy, to recover compensation in damages from the real and personal representatives of Madame Jumel, whether executors, administrators, devisees, legatees, heirs at law or next of kin, to the amount of at least one million of dollars; and that this claim remains in full force and is embraced in the conveyance aforesaid to the complainant, Nelson Chase.

(Record, pp. 10, 11.)

Answer.

Alleges that after the year 1855, Madame Jumel, being far advanced in years, and subject to many bodily infirmities, exhibited a monomaniacal antipathy to the complainants Eliza Jumel Pery

Denied.

Bill.	*Answer.*
and William Inglis Chase, for whom she had always theretofore manifested deep affection. (Record, p. 11.)	
Alleges that shortly after the death of Madame Jumel, certain persons therein named as executors set up and insisted upon as a valid and effectual will of real and personal estate, a paper writing bearing date May 15th, 1863, and purporting to be her last will, that such pretended will was, as the complainants were at the time advised wholly void, by reason, among other sufficient causes, of the monomaniacal antipathy above mentioned; and that after the death of Madame Jumel, and on the 29th of July, 1865, four nephews and nieces of Madame Jumel, her only legitimate heirs at law, conveyed unto Nelson Chase all their right, title and interest in and to her estate, real and personal, which conveyance was made before the commencement of any of the suits and actions mentioned in the bill. (Record, p. 12.)	Not admitted, and the relationship of the alleged nephews and nieces denied. (Record, pp. 36, 37.)
Alleges the execution by and between the complainants Nelson Chase and his two children Eliza Jumel Pery and William Inglis Chase, of a family settlement, whereby all the right, title and interest of those two children in or to the estate of Madame Jumel, and all their claims and demands against her and her representatives, real and personal, were vested in their father, Nelson Chase, for their and his benefit as in said family settlement expressed. (Record, p. 12.)	Denied. (Record, p 37.)

Bill.	*Answer.*
Alleges that Madame Jumel at her death was not seised or possessed for her own use and benefit, in law or equity, of any real estate which could pass by descent or inheritance, or be made chargeable for any debt, liability or duty of her, said Madame Jumel, except the two lots on the Seventh avenue, and the Saratoga property above mentioned. (Record, p. 12)	Denied. (Record, p. 37.)
Alleges that after the death of Madame Jumel the complainant Nelson Chase and others prosecuted an action in the Supreme Court of the State of New York to annul and set aside the pretended will above mentioned; and that the parties interested in maintaining that will received $88,500 from said Nelson Chase, in full satisfaction of their alleged interest and withdrew from the defence of the action, and that afterwards, on December 5th, 1866, a decree was obtained declaring the said pretended will void. (Record, pp. 12, 13.)	Admits the institution of the suit, and that will was set aside and ignores the rest. (Record, p. 37.)
Alleges that afterwards letters of administration on the personal estate of Madame Jumel were issued, and that the administrators, out of the personal assets which came to their hands, paid and satisfied all her debts and liabilities, except the claims and demands in the bill mentioned of the complainants, Eliza Jumel Pery and William Inglis Chase, and fully administered her personal estate. (Record, p. 13.)	Admits the issuing of the letters and denies the residue. (Record, p. 38.)
Alleges that all the real property of said Madame Jumel, at her death, was not then or at any	Denied. (Record, p. 38.)

Bill.

time since of so much value as one-tenth of the value of the lands wrongfully conveyed by her to Kingsland and Martin, as above mentioned, and together with all her other property and all the estate of the defendant in the bill afterwards mentioned, was not sufficient to satisfy one-fifth part of the just claims and demands of the complainants, Eliza Jumel Pery and William Inglis Chase, accruing to them from the fraudulent conveyance by Madame Jumel of the lands settled upon them, nor sufficient to satisfy one-fifth part of the just claim and demand of Eliza Jumel Pery accruing to her from the breach of the marriage contract.

(Record, pp 13, 14.)

Alleges that after the death of Stephen Jumel, and after the execution of the conveyance in trust to Michael Werckmeister, and of the deed of appointment by Madame Jumel, two pretended deeds of conveyance were on the 20th of August, 1842, simultaneously executed and recorded; one by Madame Jumel and the said Werckmeister to Francis Phillippon, purporting to convey the lands in the said bill *first*, *secondly* and *thirdly* described, that is to say, both the pieces of property on the corner of Broadway and Liberty Street, and all the rural property, except the homestead and the pieces conveyed to Kingsland and Martin; and the other by the same, Francis Phillipon to Madame Jumel, purporting to convey the same property to her, and these deeds, except the descriptions, are set forth in full,

(Record, pp. 14 to 18,)

Answer

The execution of these conveyances admitted.

(Record, p. 38.)

Bill.

Alleges that no pecuniary or other valuable consideration was paid by or in behalf of the grantees in either of these two deeds, and that they were parts of one fraudulent transaction designed and intended by the actors therein to defeat the title settled upon Mary Jumel Chase and her heirs, by virtue of the trust conveyances to Werckmeister and the deed of appointment of Madame Jumel, and wholly and absolutely void as against the complainants; and that, if by any possible construction it may be held that by force of these pretended deeds any right, title or interest vested in Eliza B. Jumel, and passed by descent or inheritance from her, and is now vested in any other person or persons than the complainants, the same was and is held for the sole use and benefit of the complainants, Eliza Jumel Pery and William Inglis Chase, or Nelson Chase, the grantee named in the family settlement above mentioned.

(Record, p. 18.)

Alleges that on January 10, 1834, after the death of Stephen Jumel and the making of the trust conveyances to Werckmeister, and the execution by Madame Jumel of her deed of appointment, she attempted in a similar manner to convey the ninety-four acre lot, that is to say, the property *thirdly* described in the bill, to one Alexander Hamilton, and that Werckmeister, pursuant to a direction to that effect of Madame Jumel, executed a deed of this property to Hamilton, in which deed it was recited that Mary Jumel Chase had conveyed the said property to Werckmeis-

Answer.

This claim denied and these two deeds insisted upon as good and operative conveyances.

(Record. p. 38.)

The execution of this conveyance admitted.

(Record, p. 38.)

Bill	*Answer.*
ter upon the same precise trusts as those she had declared in other conveyances to Werckmeister, mentioned in the bill, of other parts of the property formerly belonging to Stephen Jumel. (Record, p. 18.)	
Alleges that Hamilton subsequently discovered that Werckmeister and Madame Jumel had not good power or authority to make the above conveyance, and required the transaction to be rescinded; and, thereupon, the consideration money was refunded to him, and he reconveyed to Werckmeister upon the same trusts for which the property was held by him prior to the conveyance to Hamilton. (Record, pp. 18 and 19.)	This reconveyance admitted: but any discovery of want of power in Madame Jumel and Werckmeister to convey denied. (Record, pp. 38 and 39.)
Alleges that these last mentioned conveyances were fraudulent and void as against the complainants, and that if by any possible construction, it might be held that any title or interest was thereby gained by Madame Jumel, which passed by descent from her and became vested in any other person than the complainants, the same was held in trust for the sole use and benefit of the complainants, and under an obligation to assure and convey it to them or to the complainant, Nelson Chase, as the grantee named in the family settlement. (Record, p. 19.)	Denied. (Record, p. 39.)
Alleges that Madame Jumel, prior to her marriage to Stephen Jumel, had little or no property, and never after that event, or within many years had any intercourse of any kind, direct or indirect, with any relation by blood or affinity, if any such there were,	All except the alleged poverty of Madame Jumel denied, and the alleged relationship to Maria Jones denied, and alleges that for some years after his birth Madame Jumel recognized the defendant as her child.

Bill	*Answer.*
except only with her sister, Maria Jones and the husband and children and descendants of the said Maria, and their spouses. (Record, p. 19.)	
Alleges that in the course of the litigation, instituted as above mentioned, to set aside the pretended will of Madame Jumel, untrue suggestions and reports were extensively circulated that she had left a vast estate descendible to her heirs, whoever they might be, and that it was difficult to discover who might be entitled to take by inheritance from her. (Record, p 19.)	Denied. (Record, p. 39.)
Alleges that the circulation of such reports tempted and induced a large number of persons, falsely pretending to be her heirs at law, to set up claims to the lands mentioned in the bill, and that sundry of such claims, prosecuted by actions of ejectment, had been silenced and ended by verdict and judgment against them, but at enormous loss, inconvenience, trouble and labor to the complainant, Nelson Chase, the poverty of the claimants preventing a recovery even of the taxable costs recovered against them, and that such claims had usually been prosecuted by speculators, under bargains with the claimants for a share of any possible recovery. (Record, pp. 19 and 20.)	In substance denied or ignored. (Record, p.p. 39 and 40.)
Alleges that the defendant, George W. Bowen, sets up and pretends that he is an illegitimate son of Madame Jumel, and the only child she ever had, and consequently her only heir at law entitled to take by descent any lands of which she died seised; that he states and pretends that he was	Substantially admitted. (Record, p. 40).

Bill.

born October 9th, 1794, in a house of prostitution in Providence, R. I., his mother being then a notorious street walker and prostitute in that town, and that his father was one Reuben Ballou, the keeper of such house, and that he was finally deserted by his mother when he was a few weeks old, and never afterwards had any intercourse, communication or correspondence with her, direct or indirect, or even saw her except in the public streets of Saratoga, where he very frequently saw her in public places, and sometimes while he was walking there with his wife; and further, that although notoriously and by common fame in Providence a bastard, he never even told his wife to whom he was married when young, and with whom he lived for fifty years, that he had any connection or relationship with Madame Jumel.

(Record, p. 20.)

Alleges that since the decree annulling the pretended will aforesaid, the defendant, Bowen, had harassed the complainant, Nelson Chase, by causing numerous suits and actions at law to be brought against him and his tenants for the recovery of certain of the lands described in the bill, being all the lands therein described except those conveyed to Kingsland and Martin, and enumerates three of these suits, being actions of ejectment brought and prosecuted in the U. S. Circuit Court, of which the said complainant, Nelson Chase, was obliged to take the burden of the defence, and which, after much labor, expense and delay were dismissed for want of prosecution.

(Record, pp. 20, 21 and 22.)

Answer.

Substantially admitted.
(Record, pp. 40, 41.)

Bill.

Alleges the institution of a fourth suit of the nature of ejectment in the Court of Common Pleas for the City and County of New York, brought by the defendant jointly with one Ann Eliza Vandervoort, under a corrupt and champertous agreement between him and said Ann Eliza, that she should furnish testimony to support the action and have one-half of any recovery in it; and that in the complaint in that suit a joint seisin of said defendant and said Ann Eliza Vandervoort was set up and alleged by them; that said suit was afterwards discontinued as respects said Ann Eliza Vandervoort and her name stricken out of the same, and the same left pending as a suit of said defendant alone; that after great labor and expense to the said Nelson Chase in and about the defence, said suit was appointed to be tried on a certain day in said Court of Common Pleas, and said Nelson Chase was on that day prepared to try the same, when, before the trial came on, the plaintiff therein, the said Bowen, on the pretence that he had reason to believe and did believe that he could not obtain justice in said State Court, removed the suit to the Circuit Court of the United States, and that after a further delay said suit was brought to trial on Jan. 23d, 1872, and was on trial continously, except an interruption of a few days, until it was delivered to the jury on the 16th of March next following and resulted in a disagreement, and that such action was, at the time of verifying the bill, again on trial.

(Record, pp. 22, 23.)

Answer.

Substantially admitted, except as to the alleged corrupt and champertous agreement with Ann Eliza Vandervoort which is denied.

(Record, pp. 40, 41.)

Bill	*Answer.*
Alleges the bringing by said defendant, Bowen, of three other actions in the nature of ejectment in the Supreme Court of the State of New York, to recover the lands in Saratoga, the change of the venue of said suits from the County of Saratoga to the County of New York, on the application of said Nelson Chase, and the removal of said suits to the U. S. Circuit Court on the like pretence as above stated. (Record, pp. 23, 24.)	Substantially admitted. (Record, p. 42.)
Alleges that the action brought as aforesaid in the Court of Common Pleas, was brought by attorneys and counsellors who subsequently relinquished all connection therewith, and the same passed into the hands of other attorneys and counsellors, who brought also the three actions for the recovery of the Saratoga lands; and that these four still pending suits and actions are managed and carried on by persons other than said Bowen, who champertously speculating in his pretended claims, carry on the litigations under agreements with him to defray all the expenses, and to receive parts of any recoveries. (Record, pp. 24, 25.)	Formally denied; but with such qualifications as to amount to a substantial admission. (Record, p. 42.)
Alleges that neither said Bowen nor the speculators conspiring with him, have any expectation of an ultimate recovery in any of said suits, but do expect to keep the litigations on foot, and to vex and annoy the complainants, and thus to compel them to give and bestow upon the conspirators large sums of money as a consideration for the relinquishment of the pretended title of said Bowen, and to withdraw their suits; and that they have kept on	Generally denied or ignored, but not denied that some persons have to his knowledge committed perjury in his behalf. (Record, pp. 42, 43.)

Bill.

foot notices of suit pending, in form as required by the laws of New York, and have associated with themselves divers persons of vicious lives and conversation, who, to the knowledge of said Bowen, have committed perjury on trials already had, and are manifestly ready to commit perjury in future trials in his behalf.
(Record, p. 25.)

Alleges that the only material issue of fact in any of said pending suits at law upon which there can be any serious conflict of evidence, is on the pretence of said Bowen that he was born of the said Eliza B. Jumel.
(Record, p. 25.)

Alleges that on the first trial in said U. S. Circuit Court of the suit or action mentioned in the bill as the *fourth* brought by said Bowen, there was produced and read in evidence on his behalf, to the jury, the deposition taken on his behalf at Providence, R. I., of one Joseph Perry, who testified that he was born in said Providence, resided there from his birth, went to school there and learned his trade there, and did not depart therefrom until some years after his majority; was in his boyhood intimate and a playmate with said Bowen, went to the same school with him, and that the said Eliza B. Jumel, at a period subsequent to her alleged desertion of said Bowen, visited Providence, was at the house in which it was pretended said Bowen was born, and spoke of said Bowen, and interested herself in his plays and pleasures, and subsequently entertained, in a kind and considerate manner, at her residence in New York, an application made to her by said

Answer.

Denied.
(Record, p. 43.)

Substantially admitted, except as to the allegations that Bowen confirmed the testimony of Perry, and a curious explanation attempted of the way in which he, Bowen, was led to give credit to the perjuries of Perry, and the allegation made that Nelson Chase, or some other person in his interest procured "and foisted the said Perry upon him" to injure his case!
(Record, p. 44.)

Bill.

Perry to furnish pecuniary aid to said Bowen in his business.

That on the same trial the said Bowen, when on the stand as a witness, expressly confirmed and verified the statements of said Perry as to such their mutual acquaintance and intimacy in youth.

That afterwards, and on the same trial, Nelson Chase, the defendant in the action, occupied many days upon the point, and by the testimony of more than seventeen witnesses that the narrative given by said Perry was wholly false and fictitious, so that the counsel for said Bowen were compelled to admit, and did admit, that the said Perry was, in the whole body of his testimony, corrupt and perjured, he, the said Perry, never having been in said Providence during his minority; and that said Bowen was again upon the stand, after such exposure of the perjury of said Perry, but did not attempt to explain or extenuate his own criminality in giving the false testimony confirming the statements of said Perry.

(Record, p. 26.)

Alleges that the said Ann Eliza Vandervoort, who was united with said Bowen, as a co-plaintiff in the said action, in the Court of Common Pleas, was examined as a witness for the plaintiffs in that action, and after having testified that Lavinia Jones, the mother of such witness, then deceased, was a sister of Madame Jumel, did further testify to many pretended statements and declarations of said Lavinia to the effect that said Eliza B. Jumel was the mother of George W. Bowen, and did further testify that said Lavinia had also declared to her, said witness, that

Answer

Substantially admitted, but with an intimation that the declarations of Lavinia Jones, to which the witness, Ann Eliza Vendervoort testified, were made in a *joking* way.

(Record, p. 44,)

Bill.

during the Revolutionary war, General George Washington, then in active military service, had occasion to visit the before mentioned house in Providence, and there saw the said Eliza B. Jumel, and begot upon her the said George W. Bowen, and that it was repeatedly proven and stands confessed by all parties, that the said Eliza B. Jumel could not have been eight years old when the Revolutionary war terminated.
(Record, p. 26.)

Answer.

Alleges that, notwithstanding those and other palpable evidences of fraud in the production of evidence by and for the said Bowen and his confederates, they still persist by the same and like means to urge the affirmative of the issue aforesaid as to the maternity of said Bowen, for the purpose of vexing and harassing the complainants.
(Record, pp. 26, 27)

Denies the allegation of sinister designs.
(Record, p. 44.)

Alleges that the above issue is of no substantial importance or pecuniary consequence as between the complainants and said Bowen, inasmuch as if the said Bowen in truth and in fact were the sole heir at law of said Eliza B. Jumel, he would be bound to convey in fee simple to the complainants, Eliza Jumel Pery and William I. Chase, or to their grantee, Nelson Chase, any right, title or interest which could be construed or held to have come to him by inheritance from said Eliza B. Jumel, in or to any and all the lands which were conveyed as aforesaid by Mary Jumel Chase to Werckmeister in trust as aforesaid, and also to apply all other estate, real or personal, which might have

Denied.
(Record, p. 44.)

Bill.	*Answer.*
come to him from said Eliza B. Jumel as her heir at law, next of kin, or child, towards the satisfaction of the claims and demands in the bill mentioned of the said Eliza J. Pery and William I. Chase against said Eliza B. Jumel. (Record, p. 27.)	
Alleges that the defendant has not, in the State of New York or elsewhere than in Rhode Island, any property or estate except his pretended claims to the said property of Eliza B. Jumel; that he has no business in New York, and no occasion to go there except for the purpose of attending to the prosecution of said suits. (Record, p. 27.)	Substantially admitted. (Record, pp. 44, 45.)
Alleges that it is claimed by said Bowen and his confederates that, by the strict rules administered in courts of common law, the technical legal estate in the lands so granted as aforesaid to Werckmeister, if he be such heir at law as he pretends, and that although the complainants, or some of them, be the equitable and beneficial owners thereof, he is nevertheless entitled to recover the same at law in the suit or action brought by him as *fourthly* in the bill mentioned. (Record, p. 27.)	Insists that defendant is the owner both at law and in equity. (Record, p. 45.)
Alleges that the said Bowen and his confederates insist, in respect to the claims and demands so accruing to the complainants, Eliza Jumel Pery and William I. Chase, that they are enforceable only through the remedial action of a court of equity; and that, however perfect such claims and demands may be, and notwithstanding their sufficiency in effect and amount to absorb every es-	Substantially ignored and avoided.

Bill.	*Answer.*
tate, right, title and interest which said Bowen might claim as heir at law, child, or next of kin of Madame Jumel, the said complainants must submit to the labor, expense, trouble and vexation incident to the trial of repeated issues at law as to the fact of such pretended heirship. (Record, p. 27.)	
Charges that the motive of Bowen and his confederates in insisting upon keeping these litigations on foot and having repeated trials at law, is to compel the complainants to bestow upon them some large sum of money to relinquish their pretences. (Record, p. 28.)	Denied. (Record, p. 45.)
Alleges that the *fourth* suit or action mentioned in said bill as having been brought by said Bowen, was brought to trial a second time on December 9th, 1872, and that said trial was, at the time of the filing of the bill, still pending. (Record, p. 28.)	Admitted. (Record, p. 45.)
Alleges that the notoriety given to the pretended claims of said Bowen has excited the cupidity of desperate and immoral characters, such as said Joseph Perry, and induced them to tender themselves as witnesses to said Bowen and his confederates, to testify to pretended facts which never took place. That said Bowen has in many instances accepted the aid of such witnesses, and that the number of recruits of this class is steadily increasing. Some instances are given. (Record, pp. 28, 29.)	Denied. (Record, p. 45.)

Bill.	*Answer.*
Alleges that some of the actions brought by said defendant, are for property which, though greatly exceeding in value the sum of $500, is yet of inconsiderable value compared with the costs of countervailing the false testimony resorted to by said defendant and his confederates. (Record, p. 29.)	Denied. (Record, p. 45.)
Alleges that all the right, title and interest acquired by the conveyance from the nephews and nieces of Madame Jumel, was acquired for the sum of forty thousand dollars actually paid therefor, and was so acquired for the mutual use and benefit of the complainants, and that the sum so paid could not be recovered back. (Record, p. 29.)	Ignored. (Record, p. 46.)
Alleges that one Charles Covert, a citizen of New York, and resident of the Southern District of New York, was on Nov. 21st, 1872, in the lawful possession of certain lands which had been conveyed to him by a good and perfect assurance, by Nelson Chase, and that said defendant and his confederates, by their persistency in prosecuting his pretended claim, and by filing notices of suit pending, embarrassed said Covert, and rendered his title unmarketable, and finally drove him to a settlement with them, and took from him the sum of $2,500 as a consideration for unfettering his title. That said Covert cannot recover back this sum for the reason that he acted under a full notice and conviction of the invalidity of the claim, but that said complainants are entitled to recover it in part satisfaction	The transaction of making the settlement and taking the money admitted. (Record, p. 47.)

Bill.

of their claims and demands aforesaid.

Demand for relief.

(Record, pp. 47, 48.)

Supplemental answer.

Sets up the verdict and judgment in the action at law in favor of the defendant therein, and the suing out of a writ of error thereon to the U. S. Supreme Court, by the plaintiff therein, and such proceedings as to make the writ of error a supersedeas.

(Record, p. 49.)

the owner of Puddington, and had four sons in life. Passing over the first son, because, as it may be presumed, he was of course to inherit Puddington, the devisor directed his contemplated settlement in tail in favor of the second, third and fourth sons, or any younger sons that might be born to said Thomas Stanley Massey, in succession, &c., according to the usual course in such cases, giving to such sons life interests only with remainders in fee-tail, in each case, to the life tenants issue, if any. There was this special feature in the will which causes the decision on it to form a precedent in our case. Instead of limiting the entail himself, the devisor gave the fee to the trustees to receive the rents, &c., until the second son should attain the age of 21, and upon a further trust that, upon his attaining that age, they should convey and assign the devised estate as usual in such settlements. The succession provisions for the other stocks ran in the same way.

The proviso read as follows:

In case the said Thomas, the second son, John, the third son, Charles, the fourth son, or any other younger son, shall become possessed of Puddington, "the devise or limitation hereinbefore made or directed to be made, &c., to such of them so becoming possessed as aforesaid, shall cease and become void or not take effect, or be made, as the case may be, *and the person next in remainder* under the [testators] said limitations or directions, shall thereupon become entitled."

Thomas Stanley Massey and his eldest son both died before Thomas, his second son, the first beneficiary under the will in question, attained 21, which events brought Thomas within the terms of the proviso and excluded him.

A son was afterwards born to Thomas, and the case arose on a bill filed by this son of Thomas. The question was whether he could take, or, in other words, whether the conveyance in tail to be executed in pursuance of the will, should pass him by and begin with his uncle John, the third son.

Sir Wm. Grant held that the proviso in terms applied only to the life tenants, and that it could not be extended further. One argument against the plaintiff was, that before the time had arrived at which the conveyance in favor of the plaintiff's father was to be executed, the father had become incompetent to take. *Pp.* 501, 502, 499. Other difficulties growing out of the requisition of a conveyance, suggested themselves to Sir Wm. Grant. *P.* 500.

But all these difficulties were overcome. Indeed, they were found to be imaginary. The arguments of the counsel, as reported, are exceedingly clear and able. Sir Wm. Grant says, *p.* 507: "It is not material that the estates in this case are to be settled by a conveyance directed afterwards to be made; for I think there is nothing in the difficulty that struck me with regard to the manner in which the conveyance was to be formed, in the event of the Puddington estate having devolved upon Thomas Massey, before his age of twenty-one; as the right cannot in any degree depend upon the conveyance to be made; but that conveyance must conform to the rights as declared in the will; *which operates as an equitable conveyance until the legal conveyance came to be made.*"

The plaintiff had a decree. Sir Wm. Grant and the counsel on all sides fully recognized the first position, *i. e.*, that the declaration of the purposes in an executory trust, such as this was, and, by a parity of reasoning, ours was, is to be benignly and liberally construed, and is governed by no technical rules.

The opinions, in the House of Lords, as reported in *Phipps* v. *Ackers*, 9th Cl. and Fin., 601, 604, on the devise in favor of George H. Ackers, fully confirm the doctrinces of *Stanley* v. *Stanley*, above cited from 16 Vesey, and establish conclusively the

two propositions above, in this brief, deduced from that case.

The devise was to trustees in trust, *to convey* the lands to George Holland Ackers, when and so soon as he should attain the age of 21 years; but if he should die under that age without leaving issue of his body, the lands, &c., to sink into the residue, which in that event was given to others.

The point presented by the heir at law was in these words: "Here there is no gift at all to the individual. There is a direction to convey so that the attaining of 21 by G. H. Ackers, or leaving issue, if he die under that age, must necessarily take place before the trustee can convey." By *Pepy's*, (afterwards Lord Chancellor Cottenham), of Counsel, 5 *Simons*, *p.* 60, *and by Mr. Preston*, 3 *Cl. and Fin.*, 707, 9 *Cl. and Fin.*, 585.

Mr. Sugden, afterwards Lord Chancellor St. Leonards, for G. H. Ackers, said: "The testator having vested the whole of his estates in his trustees, directs them to convey to G. H. Ackers, when he shall attain the age of twenty-one years. The direction to convey is equivalent to a limitation to the use of, or in trust for G. H. Ackers." 5 *Sim.*, *p.* 59, 3 *Cl. and Fin.*, 710, *Cl. and Fin.*, 588, 589.

Sir L. Shadwell assented to the argument of Mr. Sugden, saying that there was no *substantial* difference between this case and a direct limitation to the beneficiary; held that he was entitled "*in equity*" to the rents and profits.

In the House of Lords the opinion of all the judges was taken, but, according to the usage which recognizes that the law judges cannot be required to answer questions on equitable titles, (9 *Cl. and Finnelly*,) 602, the questions were put as upon a direct devise to the beneficiary. *Ib.*, *p.* 590. After stating their answer, Lord Chancellor Lyndhurst, (9 *Cl. and Fin.*, *p.* 594,) spoke as follows:

"The only question, therefore, that remains to be considered is this, whether a different construction

should be put on this will, which conveys an equitable estate, from that which the learned judges have put upon the will as applied to a legal estate, or, in other words, whether the direction to convey makes any difference with respect to the disposition of the property; I am clearly of opinion that it does not; and I agree entirely in what fell from Sir *William Grant* in the case of *Stanley* v. *Stanley*, (16 *Vesey*, 491), that the right is not affected by the direction to convey, but that the conveyance must conform to the right, and that the will itself is an equitable conveyance, until that is displaced by the legal conveyance which is directed to be made. I am of opinion, therefore, that in this case *George Holland Ackers* took an equitable vested estate in fee."

Lord Brougham, at page 598, expressed himself as follows:

"We may assume that if this devise had been to George Holland Ackers directly, the legal estate, the estate given, would have been vested, and not contingent. The only question that remains is, whether the interposition of trustees, the trust being declared to assign, convey, and assure the premises (not to receive the rents and profits, that was *Stanley* v. *Stanley*, but only to convey) to *George Holland Ackers*, when and so soon as he shall attain 21 years, makes any difference, and converts the vested into a contingent interest.

"It was contended that because the immediate interest is vested in the trustees, and that they are only directed to convey and to assign to *George Holland Ackers* when he is of age, the act done to entitle *George Holland Ackers* is postponed till that time, and his interest therefore only vests at that time. But there can be no doubt that the act which entitles him is the devise; from this he derives his interest, though an equitable interest; and the only difference between his case and that of a devisee, without trustees interposed or directed to convey, is that the legal estate remains in the trustees during

his minority, and that the equitable estate vested in him during that minority, would be divested [under a limitation over in that case, there being none in this] upon his decease under age. The inclination certainly should always be to make the rules of Courts of Equity conform as much as possible to the principles recognized at law; and I can see no reason whatever for dealing upon different principles with the vesting of an equitable and of a legal interest, in respect to the present question."

At *page* 601, he, Lord Brougham, further observes:

"*Stanley* v. *Stanley*, (16 *Ves.*, 491,) seems on all fours with the case at bar as regards the point now under consideration; at least I cannot in any way distinguish the two. There was an executory trust, the devise being to trustees to receive the rents and profits until A came of age, and immediately after to convey to the use of A for life, remainder to trustees to preserve contingent remainders, remainder to the first and other sons of A; and for default of such issue, or if A died under age, then in trust over. After the case had been argued, the Master of the Rolls (Sir W. Grant) suggested, that as the trustees to preserve contingent remainders only took on the determination of A's life estate; and as the trustees were not to convey to him until he attained 21, he could, while under age, have no life estate, on the determination of which the trust to preserve the contingent remainders attached. Chiefly on this suggestion of his Honor, a second argument was ordered. The estate was then considered in two lights, either as executed, or executory. The Master of the Rolls held it clear that A took a vested remainder for life, expectant on the determination of the estate, which the trustees took during his minority, holding that the trustees received the rents and profits for the heirs at law during the devisee's minority; and his Honor said, that on consideration there appeared to be nothing in the difficulty which had struck him

at the former argument, because it could not depend on the conveyance to be made, which must conform to the rights declared by the will.

"Upon the whole, I can see no reason to doubt that the estate, in the present case vested immediately in George Holland Ackers."

Lord Campbell, the only other member of the House who assigned any reason for his opinion, spoke (at p. 603) as follows:

"The question arises as to what effect is to be given to this being only an equitable estate, because it is a conveyance to trustees * * * to convey in the manner stated. I think that equity in this case ought to follow the law; and that case which has been referred to, of *Stanley* v. *Stanley*, seems to me to be a direct authority for that purpose." (See also *Radford* v. *Willis*, 19 *Weekly Rep.* 845, 846, per Wickens, V. C.; *Law Rep.* 12 *Eq.* 110, strongly asserted in *Radford* v. *Willis*, *L. R.* 7, *Ch.* 10, 11. *Appeal from Wickens*, *V. C.* *Weehawken Ferry* v. *Sisson*, 2 *C. E. Green's N. J. R.* 475, 478, 484).

In 1 *Jarman on Wills*, *p.* 764, and *onward*, *chap.* 25, § 2, *Third Lond. Ed*, this doctrine as to executed uses is asserted; and in the same section, at *p.* 770, it is said that it "also obtains where the lands are devised to trustees upon trust to convey to limitations of the nature of those under consideration." (*Shepard's Touchstone by Preston*, *side paging* 133, 134. *Ib. p.* 139, § 9).

. Wells Sackett & Bro., Law Printers, cor. Pine & William St.

Supreme Court of the United States,

IN EQUITY.

George W. Bowen
Appellant,

vs.

Nelson Chase and others.

Supplementary Brief of Appellees.

The following observations are made in reference to the points made by the appellant's brief :

First.—The appellant claims that upon the execution of the trust deeds to Mary Jumel Bownes, Madame Jumel had the whole *use* in the lands, and that such use was executed whereby she became seised of a legal fee simple. No authority is cited in support of this position; and the authorities referred to in the principal brief of the appellees (Subdivision II of First Point, p. 35), show the law to be otherwise. The appellant's counsel are under a misapprehension in supposing that the interest of Madame Jumel under these trust deeds was such a use as would

have been executed under the New York Statute of Uses, or its model, the Statue of 27 Hen. VIII. He overlooks two important circumstances. :

First. The trust to Werckmeister was in favor of a married woman.

Second. The trustee had distinct duties to perform in relation to the property, which required the legal estate to be in him.

Cruise's Digest, Vol. 1, p. 339, *et seq.*

Second.—It is scarcely necessary to comment upon the appellant's Second Point, in which it is maintained that the various powers contained in the trust deeds to Werckmeister, became merged in the fee thereby vested in Madame Jumel.

Inasmuch as the fee did *not* become vested in her, the above position cannot be sound. It would not be sound had the fee vested in her. The appellant's counsel concede there is no authority in favor of their position, except an alleged *dictum* of Chancellor Kent, and abundance of authority to the contrary. This surely should be enough. The suggestion that because the English law is clearly settled in one way, the American law should be settled the other way, will hardly pass for sound reasoning. The English law, as settled prior to the Revolution, *is our* law. The suggestion as to the *tying up of estates* supposed to be effected by these trust deeds, if construed as the appellees construe them, is without any foundation. The mere creation of a trust does not of itself tie up or tend to tie up the title. *That* depends

on the nature of the trust. When, as here, there is a person in being who can absolutely sell at any moment and compel the trustee to convey accordingly, there is, surely, no tying up of titles.

The authority of Chancellor Kent is a singular recourse against instruments drawn by his hand.

In addition to the cases cited in our principal brief, the following may be referred to:

Cruise's Digest, Vol. IV, pp. 134, et seq.
Goodill *v.* Brigham, 1 Bos. & Pul., 192.
Ray *v.* Pring, 5 B. & Ald., 561.
Doe *v.* Jones, 10 B. & C., 459.

Third.—The ground is taken by the appellant's counsel that even after the execution by Madame Jumel of her power of appointment, she still retained a power of sale, and could so execute that as to override her previous appointment. The proper answer to this argument is that when a person executes a power of appointment, and wishes still to preserve a dominion over the property, the purpose is easily accomplished by inserting in the instrument a power of avoiding the uses already declared and declaring new ones. Madame Jumel exercised this privilege, and reserved a power of avoiding the uses declared; but such power of avoidance was limited to a single method, namely, *by will:* and could only be executed in that mode.

If there were any foundation whatever for the appellant's argument, it would apply in the case of an absolute sale. The sale to Phillippon was a mere pretence.

The appellant's counsel have been misled by some observations of Mr. Sugden in his book upon powers. In the complicated provisions of an English family settlement inserted in wills, and sometimes in marriage settlements, for the purpose of guarding against many possible emergencies and securing a support for sons and daughters, jointures in cases of marriage, &c., &c., there are often found several different powers, some vested in the tenant for life, and others in trustees. These are, speaking generally, powers of leasing, of charging, of jointuring, and of selling and exchanging.

All these powers are created for the same purpose, namely: to carry out the scheme of settlement; and it is sometimes manifestly *a part of such scheme*, that, after the execution of one or more of the powers, other powers should still subsist in reference even to the same property; and an execution of them would overreach estates created previously. This is most usually the case in reference to the power of sale and exchange, the object of which is to improve or preserve the estate by changing its form; and the old trusts of the settlement of course attach upon the property received by way of exchange. Whenever a doubt arises as to whether it may not have been the intent of the settlor that the execution of some powers should not override the prior execution of other powers, such doubt is to be resolved by a sound construction of the instrument.

No such doubt can arise here. The *whole* object was accomplished by the disposition effected through the power of appointment, and no intent existed to *reserve* any power afterwards, *except a power of devising.*

The position of the appellant's counsel is in effect, that where a general power of appointment exists, inasmuch as this always includes a power of sale, any *voluntary* settlement is revocable through an exercise of the power of sale. There is no countenance in the law for such a doctrine.

Fourth.—The speculations touching Madame Jumel's thoughts and purposes contained on page 46 of the appellant's brief are calculated to excite a smile. The learned counsel should in some form, apprize us when he means to be comical, and when serious.

Fifth.—The claim of the appellant that by the provisions of Sections 46, 47, of Art. Second, Title 2, Chap. I., Part II. of the R. S. of New York of 1830, the equitable estate of Madame Jumel, under the trust deeds, was converted into a fee, needs little comment. The case of Anderson *v.* Mather (44 N. Y., 249) is conclusive to the contrary. The legal estate in the trustees is expressly preserved by the 48th section of the same Article. The trust was by no means formal. The case of Jumel *v.* Jumel (9 Paige, 591) contains upon this point but a *dictum*. It was not necessary to the decision. Madame Jumel upon the evidence before the Chancellor, was in equity bound to pay the $6,000 mortgage, whether she had a legal or equitable estate in the premises; for in either case the whole beneficial interest was in her, aside from the deed of appointment, which was not then before the Court.

Sixth.—The appellant gravely suggests that if Madame Jumel had no right to sell, then the sales to Kingsland and Martin are void, and no damage has been done to the heirs of Mary Jumel, who may yet recover those lands. This is in accordance with the monstrous views of law and justice frequently asserted by this illegitimate. Kingsland and Martin were *bona fide* purchasers. As between them and the heirs of Mary Jumel Bownes, who are volunteers, the former can hold the property. Madame Jumel at the time of the sales to them had still the absolute disposition and control of the property through her power of devising. She was in equity bound to exercise this power for the benefit of these *bona fide* purchasers, and their equities clearly override the title of Mary Jumel and her heirs.

Seventh.—The appellant's counsel endeavors to attack that part of the decree which is to the effect that the claims of the heirs of Mary Jumel against Madame Jumel and her heirs many times exceed the value of the estate, real and personal, of Madame Jumel at her death by the assertion that lots 7, 9, 10, 11. 12, 13, 14 and 15, on Loss' map, were not covered by the appointment, and therefore constituted part of the estate of Madame Jumel at her decease. (Appellant's brief, pp. 66, 67.)

But this is a misapprehension. So far as paper title goes, none was shown in Madame Jumel at all covering these lots. The evidence, however, clearly proved that, in fact, the title to these was in the same condition as that of all the rest of the property, that is to say, that an

absolute equitable estate therein was vested in the heirs of Mary Jumel. So the learned judge found, and the correctness of this conclusion will scarcely be questioned.

Eighth.—The appellant makes the extraordinary claim that the grounds upon which this bill was founded were asserted, litigated and allowed in favor of the appellee in the trial of the suit at law. This is an utter error. True it is that in actions in the nature of ejectment in the State Courts of New York equitable defences may be interposed, and these grounds were thus interposed in the suits brought in the State Courts. But the appellant removed them into the federal tribunal, and there surely, law and equity cannot be administered in the same suit.

Accordingly, in the U. S. Circuit Court, the appellant had leave to substitute, and did substitute a formal declaration in ejectment, and the appellee interposed the usual plea of not guilty. This was the issue and the only issue tried. The equitable defences were, as was necessary, wholly abandoned, until reasserted by their bill.

Lastly.—Our principal brief sufficiently answers any other points made by the appellant.

JAMES C. CARTER,

Of Counsel for Appellee.

2 Wesey Jr 236

4 Cruise Dig- 146 0

3 vol 2 ed Ru Stat 654

2 vol Rev Stat N.Y. 32

1 vol Rev Stat 732-3

Chap 1 Ar 2 Ti 2 Sec 84

44 N Y

1 Bark Ch- 1828 220 165

7 Moore

2 Tenn- 821

3 Comp 336

2 Sa Gen 5

1 Atol & Ellis

9. Paige 531

21 Mine 447

4 Dunc 385

8 Paige 339 193

Supreme Court of the United States.

GEORGE W. BOWEN, APPELLANT,

vs.

NELSON CHASE AND OTHERS, APPELLEES.

SUPPLEMENTARY BRIEF OF APPELLEES.

The appellant begs leave to submit the following suggestions with reference to the points made by the appellees in their original and their supplementary briefs:

I.

The cases referred to by appellees at page 33 of their brief do not sustain the point with reference to which they are cited. There is no doubt of the principle laid down in those cases that the declarations of one in possession of land with reference to the title by which he holds the same are admissible to show the character of his possession and, possibly, the extent thereof, and they are binding upon those who take under him, to that extent. But in our case, when the alleged declarations were made by Stephen Jumel in 1828, he was not in possession, only as he lived there with his wife, who was then the owner. He had no estate or interest whatever in the land. The declarations were not with reference to his own title, but that of Eliza B. Jumel; and finally the appellant did not take the title from him after that time, but from Eliza B. Jumel.

No case holds that one after he has sold land can make declarations with reference to his grantee's title which will bind the grantee or those claiming under him.

II.

The authorities referred to by appellees on page 36 to show that the legal title was in the trustee, simply hold that in case of a married woman the statute does not execute the use, but leaves the legal title in the trustee, on the ground that the married woman is under the disability of coverture. The operation of the statute, we submit, was simply suspended during the disability, and when that terminated by the death of Stephen Jumel in 1832 the statute operated at once upon the trust, and the whole legal and equitable title vested in Eliza B. Jumel.

III.

We are unable to discover that the case of Van Alst *v.* Hunter, 5 Johns. Ch., referred to by appellees at page 40, has any application.

IV.

The cases referred to by the appellees under point I, (b,) page 44, simply hold that under certain circumstances two instruments, executed at the same time and with reference to the same subject-matter, are to be construed together and, for certain purposes, constitute but one instrument; but the principle does not go to the extent of making the two deeds void.

A husband cannot convey real estate directly to his wife; and yet every day husbands are conveying real estate to a third person, and he simultaneously therewith conveying the same to the wife of the first grantee, so as to vest the title in her. Does any lawyer imagine that these two conveyances are to be treated as one, and to be held void as being a conveyance by the husband directly to his wife?

The two sections, 64 and 65, of the statute there referred to clearly sustain our own view as above expressed.

V.

In the case of Church *v.* Ruland, 64 Penn., 432, 434, referred to by appellees at page 45, the court held that a trust arose *ex maleficio*. There was no written declaration of trust. Where the trust is in writing and contained in the trust deeds, and they recorded, both at the common law and under the statutes of the State of New York, the trustee could not destroy the trust or convey away the property so as to divest the title or interest of the *cestui que use* or beneficiary under the trust, excepting in the manner pointed out in the trust itself; but a different rule applies where the trust is not contained in the trust deeds and so not recorded. In the former case there cannot be an *innocent* purchaser; in the latter there may.

VI.

We fully agree to the proposition laid down by the appellees in Point I, (*a*,) page 44, that the recording of the instruments was notice to Phillipon, and that he took no title, provided the trustee did not convey in accordance with the trusts as declared. But this applies with equal force to the purchases by Mr. Kingsland and Mr. Martin. The recording of the trust deeds and the appointment made them notice to the whole world. (See Girard on Titles, (2d edition,) pp. 588–593.)

Mr. Martin and Mr. Kingsland were not therefore *innocent* purchasers; they took with notice of the trust and appointment.

VII.

The cases referred to by the appellees under Point I, title 7, (1,) page 45, do not apply to this case. In those cases the trusts were active and not executed by the statute of uses, and as the legal title was in the trustee the *cestui que use* could, of necessity, take only an equitable title.

VIII.

In the cases referred to by appellees under Point I, Title VII, (3,) at top of page 46. there was an *active*, not merely a *formal* trust, and for that reason the Revised Statutes of the State of New York did not operate upon them.

(*a*) As to the case of Anderson *v.* Mather, 44 N. Y., 249, 258, see our original points at page 53, Point XI.

(*b*) In the case of Pitcher *v.* Carter, 4 Sand. Ch., 2–16, the counsel on both sides conceded that it was an *active* trust, and argued the case upon that theory. There is no claim by counsel, and no suggestion by the court that it was a *formal* trust.

IX.

The authorities of Cornish on Uses, p. 17, notes *d* to *g*, and Cruise's Digest, vol. I. pp. 338, 339, under the same Point I, Title VII, (4,) page 46, are not applicable to this case. They both refer to uses as they existed in England prior to the statute of 27 Henry 8, ch. 10, when the *cestui que use* stood in an entirely different position from what they did afterward, under that statute. If the court will read the two sentences preceding the reference in Cornish on Uses, and which should be read with the reference, it will be seen that it has no application to trusts as they exist since the statute of 27 Henry 8, chap. 10.

X.

With reference to the cases referred to by appellees on their third point, page 47, we would say Debeal *v.* Thompson does not apply, as there was a contract entered into, of which the words in question were a part. Quinlan *v.* Quinlan, Hayes & Jones' Rep., 785, is decisive of the point in question. This was followed by Lord Chancellor Sugden, in Maunsell *v.* White, 1 Jones & La Touche's Rep., 539, and the distinction between Debeal *v.* Thompson and the present case clearly pointed out. Also to the same effect

see Snell's Principles of Equity, p. 438, and Parsons on Contracts, 5th ed., vol. 2, p. 72.

Ridley *v.* Ridley and Patterson *v.* Patterson do not apply, as in those cases there was a contract legal and binding; in our case simply a declaration of intention. The other two cases we did not find.

XI.

The cases referred to by appellees under point 4, title 5, page 51, do not apply to this case. Those were actions against the trustee. In our case Mr. Werckmeister, was the trustee, not Eliza B. Jumel.

XII.

The appellees in the 8th point of their supplemental brief assert that law and equity cannot be administered together, and so that the appellees equitable title could not have been asserted in the action of ejectment. The conclusive answer to that is, that they did assert and prove substantially all that they have proved in this suit, whether they had a right to or not. They went to the jury upon it, and had a direction by the judge to the jury to find in their favor upon a part of it. Certainly it does not lie in their mouth now to say that they or the court in the action of ejectment, did what was wrong. The action of the circuit judge in the law case is binding upon all the parties thereto until reversed.

XIII.

The appellees in their 21st point in their brief in the writ of error case, at page 48, concede that what is contended for by the appellant in this case in his 18th point, page 63, is correct, unless the case of Anderson *v.* Mather, 44 N. Y. Rep., 258, shows that the Revised Statutes did not operate upon the trust in question.

Respectfully submitted,

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Solicitor for Appellant.